CLERK'S COPY.

See also case No. 260.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934

No. 135

PANAMA REFINING COMPANY ET AL.,
PETITIONERS,

vs.

A. D. RYAN, S. D. BENNETT AND J. HOWARD MARSHALL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITION FOR CERTIORARI FILED JUNE 29, 1934.

CERTIORARI GRANTED OCTOBER 8, 1934.

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[fol. 2]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, TYLER DIVISION

In Equity No. 635

and

Consolidated Causes Nos. 636 and 640

PANAMA REFINING COMPANY ET AL., Plaintiffs,

vs.

A. D. RYAN ET AL., Defendants

AMENDED BILL OF COMPLAINT—Filed Oct. 23, 1933

Comes now Panama Refining Company, a corporation, organized and existing under and by virtue of the laws of the State of Texas, with its home office in Kilgore, Gregg County, Texas, and A. F. Anding, a citizen of the United States and of Gregg County, Texas, hereinafter referred to as plaintiffs, and complaining of A. D. Ryan, an agent of the Department of the Interior of the United States, who is residing in Smith County, Texas, J. Howard Marshall, Assist-[fol. 3] ant to the Attorney General of the United States, who is also temporarily residing in Smith County, Texas, and S. D. Bennett, United States District Attorney for the Eastern District of Texas and a resident of Beaumont, Texas. That the Panama Refining Company and the said A. F. Anding have joined as plaintiffs in this suit for the reason that they have a mutual interest in the relief prayed for by each of them, in this, that they each pray for injunctive relief, restraining the defendant, A. D. Ryan, his agents, servants, and employees from further enforcing against them and each of them the rules and regulations of Harold L. Ickes, Secretary of the Department of the Interior of the United States, promulgated under Section 9c of the National Industrial Recovery Act, and also to restrain the said A. D. Ryan, his agents, servants and employees from further coming upon their respective properties and gauging their tanks and digging up their pipe

lines and otherwise wrongfully interfering with them in their respective business and occupations, and also to restrain the defendants, J. Howard Marshall, and S. D. Bennett, from bringing criminal proceedings against them and each of them because of their failure to comply with said rules and regulations being enforced by the said A. D. Ryan.

I

The Panama Refining Company, for cause of complaint, would show to the court that it is the owner and operator of a crude oil refining plant at Kilgore, Texas; that it does not own any oil and gas leases or oil wells, and does not produce any oil, but purchases all of its crude oil requirements from various and sundry crude oil producers whose oil is produced in Gregg and Rusk Counties, Texas, or from those who have purchased said oil from oil producers in [fol. 4] Gregg and Rusk Counties, Texas, and only after said oil has been produced. Therefore, the plaintiff, Panama Refining Company, has nothing whatsoever to do with the production of crude oil within the State of Texas, and the rules and regulations of the Railroad Commission of Texas promulgated under the oil and gas conservation statutes known as Title 102, R.C.S. of 1925 and the amendments thereto are not applicable to this plaintiff's business. That all oil purchased by this plaintiff is not only produced within the State of Texas, but is also situated within the State of Texas at the time same is purchased by this plaintiff, and same is manufactured into gasoline, kerosene, gas oil, and other products in the plaintiff's refining plant at Kilgore, Texas, and wholly within the State of Texas; that after said crude oil is manufactured into gasoline and other products, such products are sold to dealers within the State of Texas and those outside of the State of Texas. That this plaintiff is not engaged in interstate commerce in any manner whatsoever, except as to that proportion of the refined products of crude oil that it manufactures in its refining plant at Kilgore, Texas that it sells and transports into other states.

II

Plaintiff alleges that by Section 9c, Title 1 of the National Industrial Recovery Act passed by the 73rd Congress (Public No. 67), it is provided as follows:

"The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any state law or valid regulation or order prescribed thereunder, by any board, commission, of-
[fol. 5] fice, or other duly authorized agency of the State. Any violation of any order of the President issued under this subsection shall be punishable by a fine of not to exceed $1000.00 or imprisonment for not to exceed six months, or both."

That after the enactment of said National Recovery Act by Congress, as aforesaid, and on July 11, 1933, the President issued a proclamation prohibiting the transportation in interstate and foreign commerce of any petroleum or the products thereof produced in violation of any state law or valid rule or regulation of any board, agency, etc. of the state promulgated thereunder, and designated Harold L. Ickes, Secretary of the Interior, as the agent of the President to promulgate rules and regulations for the carrying into effect of said Section 9c of said statute; and, thereafter, and on July 15, 1933 and July 25, 1933, and August 2, 1933, the said Harold L. Ickes, Secretary of the Interior, promulgated rules and regulations for the carrying into effect of said section of said act, copies of all of which are attached hereto marked Exhibit "A" and made a part hereof for reference thereto.

III

Plaintiff alleges that said Section 9c of the act of Congress, as aforesaid, is void and of no force and effect for the reason that the same is an attempt upon the part of Congress to delegate to the President legislative power, that is, to authorize the President at his discretion to prohibit the movement in interstate and foreign commerce of the commodities referred to therein, which is in contravention of Section I, Article I of the Constitution of the United States; that said section is further void for the reascon that it is not within the power of Congress to
[fol. 6] prohibit the movement in interstate and foreign commerce of ordinary commercial commodities, harmless in themselves, because of the manner of their production, the

manner of such production being wholly within the jurisdiction of the state and local authorities. That if said section 9c of said act were valid and the President had the right and authority thereunder to prohibit the movement in interstate and foreign commerce of the commodities referred to therein, nevertheless, the rules and regulations of the said Harold L. Ickes promulgated thereunder, and especially Paragraph 5 thereof which requires the plaintiff to file a statement under oath every thirty days, or more often if the said Harold L. Ickes shall direct, setting forth the information called for therein, and also Paragraph 7 of said regulations, requiring the plaintiff to keep accurate books and records of all transactions involving the production and transportation of petroleum and the products thereof open for inspection of the agents of the Department of the Interior, are void and of no force and effect for the reason that the power and authority sought to be exercised and enforced by said regulations are not within the jurisdiction of the Federal government, as the matters and things sought to be regulated by said regulations are not interstate and foreign commerce as contemplated by the commerce clause of the Constitution of the United States, therefore, said regulations 5 and 7 are in excess of any power and authority on the part of the President or his appointee, Harold L. Ickes, and are therefore void.

IV

Plaintiff alleges that notwithstanding the invalidity of said regulations 5 and 7 of the said Harold L. Ickes, as aforesaid, the defendant, A. D. Ryan, who was in charge of a large body of men operating in the East Texas oil field [fol. 7] for the purpose of enforcing said rules and regulations of Harold L. Ickes, is enforcing the same against this plaintiff and demanding of it that it file with the Bureau of Investigation of the Department of the Interior daily reports covering the matters set forth in Paragraph 5 of said regulations, and that it also keep open, for his and his agents' inspection and examination, books and records showing the amount of oil that it purchases, from whom purchased, and the disposition thereof, and is threatening the plaintiff that if it fails to comply with said regulations, he will cause criminal prosecutions to be issued against its officers and agents for the infliction of fines and imprison-

ment against it for failure to comply with said regulations, and, in fact, since the filing of the plaintiffs' original petition herein, the said A. D. Ryan has caused the defendants, J. Howard Marshall and S. D. Bennett, to issue a complaint against the officers of this plaintiff and have them arrested because of having failed to comply with said rules and regulations, and said defendant, A. D. Ryan, has threatened plaintiff that he will continue to have them arrested and charged with the violation of said regulations if they continued to fail to comply with said regulations, and plaintiff fears that if they are not restrained, that they will continue to file complaints and arrest the officers and agents of the plaintiff for their failure to comply with said regulations, all of which is depriving them of their liberty without due process of law and in contravention of the Fifth Amendment to the Constitution of the United States.

V

Plaintiff further alleges that the said defendant, A. D. Ryan, has, by force and over the objection of the plaintiff and its officers and agents, from time to time come upon [fol. 8] the property of the plaintiff and gauged its tanks and inspected its pipe lines and other equipment, all for the purpose of attempting to find some evidence of the plaintiff's violation of the rules and regulations of the said Harold L. Ickes or violation of the rules and regulations of the Railroad Commission of Texas, and that they have demanded the books and records of the plaintiff for their examination and inspection, all of which is an infringement upon the right of the plaintiff, and in violation of the Fourth amendment to the Constitution of the United States, and unless the defendant, Ryan, and his representatives are restrained, plaintiff fears that they will continue to come upon its property and gauge its tanks and inspect its books and records in an attempt to find some evidence upon which to base a criminal complaint against the plaintiff.

VI

The plaintiff, A. F. Anding, for cause of complaint against the above named defendants, here re-adopts all of the allegations made by the plaintiff, Panama Refining Company, and, in addition thereto, would show to the court that he is the owner of two certain oil and gas leases, upon

each of which there has been drilled an oil well, which are situated in the East Texas oil field, one of which is upon a five acre tract of land upon the Sanders tract, Mary Van Winkle Survey, Gregg County, Texas, and the other being located in Rusk County, Texas. That the defendants are likewise enforcing against him the rules and regulations of Harold L. Ickes attached hereto, and particularly Paragraphs 4 and 7 of said regulations; that this plaintiff is merely producing oil within the State of Texas and does not transport any oil outside of the State of Texas, and, by reason thereof, he is not in any wise engaged in interstate commerce; that said Paragraphs 4 and 7 of said regulations are void and of no force and effect for the reason [fol. 9] that the matters sought to be regulated thereby are wholly within the jurisdiction of the State of Texas and the local authorities and over which the Federal Government has no jurisdiction whatsoever; but, notwithstanding their invalidity, defendant, A. D. Ryan, has demanded that he comply with the same and file with the Department of the Interior the reports called for by said Paragraph 4 and that he also keep open, for the inspection of him and his agents, books and records showing the amount of his production and his disposition thereof, and said defendant has threatened this plaintiff that if he fails to comply with said regulations, he will cause the defendants, J. Howard Marshall and S. D. Bennett, to institute criminal proceedings against him for such violations of said rules and regulations, and, in fact, since the filing of this petition in this court, the said defendant, A. D. Ryan, has caused the said J. Howard Marshall and S. D. Bennett to file a complaint against him and have him arrested, charging him with a criminal offense against the laws of the United States because he has failed to comply with said regulations; and said defendant, Ryan, has threatened this plaintiff that he will continue to have him subjected to criminal prosecutions if he further fails to comply with said regulations, and the plaintiff fears that he will cause the said J. Howard Marshall and S. D. Bennett to institute further criminal proceedings against him and subject him to criminal prosecutions for the failure to comply with said rules and regulations, all of which has deprived and will continue to deprive the plaintiff of his liberty without due process of law and in violation of the Fifth Amendment to the Constitution of the United States.

VII

This plaintiff further alleges that in addition to the requirement and demand that he comply with said rules and [fol. 10] regulations, the said A. D. Ryan and his agents and representatives have come upon the oil lease of the plaintiff, above referred to, by force and over the objection of the plaintiff, and have dug up the plaintiff's pipe lines and severed and destroyed the same, all in an attempt to obtain some evidence against this plaintiff upon which to predicate a criminal charge against the plaintiff, all of which is in violation of the Fourth Amendment to the Constitution of the United States, and the plaintiff fears that if said defendants are not restrained from further coming upon his property that they will continue from time to time to come upon his property, dig up his pipe lines, and gauge his tanks in an attempt to obtain evidence against the plaintiff and in violation of his constitutional guarantee, as aforesaid.

VIII

Plaintiffs join in alleging that even though said Section 9c of said National Industrial Recovery Act is valid, and even though the rules and regulations of the said Harold L. Ickes, complained of herein, were valid, nevertheless, the defendants have no right or authority to enforce the same against these plaintiffs, for the reason that said Section 9c and all rules and regulations promulgated thereunder become operative in Texas only in the event oil is being produced in excess of a state law or valid rule and regulation by any commission, board, or other state agency; that there is no state law prohibiting or restricting the amount of oil that may be produced from any oil well within the State of Texas; that the Railroad Commission of Texas is the only commission or board or agency authorized by law to make any rules or regulations with reference to the production of oil within the State of Texas; that there is no valid rule or regulation of the Railroad Commission of Texas restricting the production of oil in Texas, in this, that before the Railroad Commission of Texas can make a valid rule or regula- [fol. 11] tion restricting the amount of oil that may be produced from any oil well in Texas, it must, at a hearing called for that purpose, and after ten days notice, find from the evidence heard at said hearing that it is necessary in order to prevent waste that the production of oil be re-

stricted to the amount so found by the Commission. That the orders and regulations of the Railroad Commission promulgated on September 5th, 1933, as amended on September 30th, 1933 and as further amended on October 18th, 1933, copies of which are attached hereto and marked Exhibits "B", "C", and "D", were not promulgated within the purview of the conservation laws of the State of Texas, being known as Title 102, R. C. S. of 1925 and the amendments thereto, that is, after notice and hearing of evidence as to the necessity of said orders, but said orders were promulgated and put in force and effect and are now being enforced by the Railroad Commission because of instructions given to the members of the Railroad Commission by Harold L. Ickes, who styles himself as Administrator of the Petroleum Code promulgated by the President under the provisions of the National Industrial Recovery Act, in which he advised the members of the Railroad Commission how much oil could be produced in Texas, all of which is apparent from the face of said orders of the Railroad Commission. That since said orders of the Railroad Commission are not the result of the deliberation and finding from evidence heard by the Commission as to the necessity of said orders to prevent waste as provided by the Statutes of Texas, they are void and of no force and effect, as said orders are in excess of any power or authority of the members of the Railroad Commission. That since the orders of the Railroad Commission are invalid, Section 9c and all orders of the National Industrial Recovery Act and all rules and regulations promulgated thereunder do not apply to the plaintiffs, and the further enforcement of said act of [fol. 12] Congress and the regulations and rules thereof against the plaintiffs, either as to intrastate or interstate business, is without authority of law and is depriving the plaintiffs of their property without due process of law and in contravention of the Fifth Amendment to the Constitution of the United States.

Wherefore, plaintiffs pray that the court immediately issue a temporary restraining order, restraining and enjoining the defendants from further coming upon the refining plant of the plaintiff, Panama Refining Company, or interfering with it in any manner in the operation of its refining business, and from further interfering with it in the purchase of oil and the refining of the same, or the dis-

position of said oil and the disposition of the refined products of the oil so refined; and that they be further restrained from coming upon the property of the plaintiff, A. F. Anding, or molesting him or his property in any manner whatsoever, or interfering with him in the operation of his oil wells; and that they be further restrained from further demanding of either of the plaintiffs reports called for in Paragraphs 4 and 5 of the regulations attached hereto; and that the defendants, A. D. Ryan, J. Howard Marshall, and S. D. Bennett, be restrained from instituting any criminal proceedings against these plaintiffs because of the violation of said Paragraphs 4 and 5 of said regulations of the Secretary of the Interior, and that upon the preliminary hearing hereof that an interlocutory injunction to the same effect be granted and that upon the final hearing hereof that said injunction be made permanent; that they recover their costs herein expended and have such other general relief to which they may be entitled under the facts proven.

F. W. Fischer, Tyler, Texas, Attorney for Plaintiffs.

[fol. 13] NOTE.—Exhibit "D" is not attached hereto for the reason that a copy of said order of the Railroad Commission of October 18th, 1933, is not yet obtainable by the public, and therefore reference to the original order on file in the office of the Railroad Commission at Austin, Texas, is here made.

Duly sworn to by A. F. Anding. Jurat omitted in printing.

EXHIBIT "A" TO AMENDED BILL OF COMPLAINT

United States Department of the Interior, Office of the Secretary, Washington

The following general rules and regulations are prescribed in conformity with the requirements of the Act of [fol. 14] Congress of June 16, 1933, known as the "National Industrial Recovery Act" (Public No. 67, 73rd Congress), and the orders of July 11 and July 14 of the President of the United States issued pursuant to such legislation.

Regulations

I

Under the terms of the aforesaid act and orders petroleum or the products thereof is in interstate and foreign commerce (1) when petroleum or any of the products thereof is in the course of shipment or transportation by rail, pipe line, water, truck, or any other means of conveyance from any State, Territory, or District of the United States to any other State, Territory or District of the United States, or to a foreign country, or (2) when petroleum or any of the products thereof is in any quantity or in any manner commingled with petroleum or the products thereof some part of which is in the course of such shipment or transportation, regardless of how such commingling occurs during the various processes of shipment or refining. Excess production of petroleum or the products thereof under said act and orders includes petroleum produced in excess of proration quotas, oil-gas ratio requirements or any other purported conservation measure which tends to limit, directly or indirectly, the production of petroleum or the products thereof.

II

Any producer, operator, lessee, royalty owner, or other person, natural or artificial, having an interest in any petroleum producing property, or possessing any right, title or interest in petroleum or the products thereof, who shall ship, transport, or deliver to another for shipment or trans- [fol. 15] portation or shall acquiesce in the procuring or conspire with any other persons, natural or artificial, to procure the transportation in interstate or foreign commerce of any petroleum or the products thereof; or any person, natural or artificial, who shall receive for shipment or transportation in interstate and foreign commerce, or shall purchase for shipment in interstate and foreign commerce any petroleum or the products thereof, with the knowledge that such petroleum was produced or withdrawn from storage in violation of any law, or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of a State, shall be deemed to have violated the provisions of Section 9(c) of the National Industrial Recovery Act (Public No. 67, 73rd Con-

gress) and the orders and regulations thereunder, and shall be subject to the penalties prescribed in the Act. And each transaction shall be deemed a separate offense.

III

Because of the interrelation of interstate and intrastate commerce in petroleum and the products thereof and the direct effect upon intrastate and foreign commerce of petroleum and the products thereof moving in intrastate commerce, it is essential and hereby required for the proper enforcement of the provisions of Section 9(c) of the National Industrial Recovery Act (Public No. 67, 73rd Congress) and the orders and regulations issued thereunder, that there shall be furnished the Division of Investigations of the Department of the Interior such information as respects production, purchases and shipments as is hereinafter required, regardless of whether such production, purchases and shipments are in interstate and foreign commerce or in intrastate commerce.

[fol. 16]

IV

Every producer of petroleum shall file a statement under oath, sworn to before any duly authorized State or Federal officer, not later than the fifteenth day of each and every calendar month, beginning with August 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following information for the given field involved covering the preceding calendar month:

(1) The residence and post-office address of the producer.

(2) The location of his producing properties and wells, the allowable production for each property and well as prescribed by the proper State agency for both property and wells.

(3) The daily production in barrels produced from each property and well.

(4) A report of all deliveries of petroleum showing the names and places of business of all persons to whom such petroleum was delivered whether purchasers, consignees

or transporting agencies, and the quantity involved in each delivery, transportation or other disposition thereof, together with a report of all petroleum in storage, wherever located, at the beginning and at the end of said calendar month, the place of storage and the amount in storage at each place.

(5) A declaration that no part of the petroleum or the products thereof produced and shipped has been produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law, or valid regulation or order prescribed there-[fol. 17] under by any Board, Commission, Officer, or other duly authorized agency of the State in which the petroleum was produced. As amended by Order of July 25, 1933.

V

Every purchaser of petroleum shipper (other than a producer) of petroleum, and refiner of petroleum (including all persons engaged in the processing of petroleum in any manner), shall file a statement under oath sworn to before any duly authorized State or Federal officer, not later than the fifteenth day of each and every calendar month beginning with August 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following information for the preceding calendar month:

(1) The residence and post-office address of the purchaser, shipper, refiner, or processor.

(2) The place and date of the receipt, the names and business addresses of the producers and/or other parties from whom the petroleum was received, the amount received of such petroleum and the amount of petroleum held in storage or otherwise on the last day of the calendar month next preceding the period covered by the report.

(3) The disposition of said petroleum, including the place and date of delivery, the amount delivered, the names and business addresses of the consignees to whom delivered, the transporting agencies, and the amount of petroleum held in storage or otherwise at the end of said calendar month.

(4) A declaration that to the best of the information and belief of the affiant, none of the petroleum received and/or [fol. 18] disposed of was produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or duly authorized agency of the State in which the petroleum was produced. As amended by Order of July 25, 1933.

VI

No transporting agency whether by rail, pipe line, water, motor vehicle, or any other means of conveyance shall receive for transportation any petroleum or the porducts thereof unless the respective shippers and producers hereinafter described shall each furnish, and the transporting agency or agencies shall receive in good faith, and without reasonable grounds for believing that any fact stated is untrue, affidavits sworn to before any duly authorized State or Federal officer setting forth the information required by this regulation for the respective shippers or producers.

The following rules and classifications shall govern the furnishing of affidavits under this regulation:

Class "A" Shipments

Any shipment of petroleum, offered for shipment to any transporting agency, in the area where produced.

Class "A" shipments shall be supported by affidavits of both the shipper and the producer containing the following:

(a) The residence and post-office address of both the producer and the shipper.

(b) A declaration that none of the petroleum shipped has been produced or withdrawn from storage in excess of [fol. 19] the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of the State in which the petroleum was produced.

(c) A recital of supporting facts, including the number of barrels included within the shipment, a designation of the properties producing the petroleum shipped, the time

during which such petroleum was produced and the rate of daily production during this period, together with the amount of production allowed by State law or regulations thereunder during this period of production, and wherever the State law or regulations thereunder limiting production apply to individual wells, then a designation of the wells from which such petroleum was produced, and a number of barrels contained in the shipment produced from each well, together with the daily production of each well during the period when such shipment was produced.

(d) Such other information as may be required from time to time by the Division of Investigations of the Department of the Interior, for the proper enforcement of these orders and regulations.

Provided, however, That if the petroleum offered for shipment was produced on or before July 11, 1933, and such petroleum has been acquired from any other shipper and/or producer and has been purchased or otherwise acquired from many sources and areas and has been so commingled that it is impossible for the shipper to furnish the facts required in subparagraph (c) above, the recital of facts required in such subparagraph (c) may be omitted and the following statement submitted in lieu thereof:

"(c1) The date and place of each transaction involving the acquisition of petroleum so commingled subsequent to [fol. 20] June 16, 1933; the name and business addresses of the producers and/or shippers from whom such petroleum was acquired and the amount of petroleum involved in each transaction.

"(c2) A statement setting forth the reasons why the information requested in subparagraph (c) above cannot be furnished."

Class "B" Shipments

Any shipment of the products of petroleum when such products are, after processing or refining, offered for shipment to any transporting agency, in the area where the petroleum, which has been processed or refined, was produced.

Class "B" shipments shall be supported by an affidavit of the shipper containing the following:

(a) The residence and post-office address of the shipper.

(b) A declaration that the shipper did not acquire such petroleum or the products thereof with the knowledge that such petroleum had been produced in violation of any State law, or rule or regulation or aid or abet any other person in so producing the same, and that to the best of his information and belief the products of petroleum shipped have not been derived from petroleum produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, officer, or other duly authorized agency of the State in which the petroleum was produced.

(c) Such other information as may be required from time to time by the Division of Investigation of the Depart- [fol. 21] ment of the Interior for the proper enforcement of these orders and regulations.

Class "C" Shipments

Shipments of petroleum or the products thereof, when such shipments are made from a point outside the area where the petroleum was produced.

Class "C" shipments need not be supported by affidavit.

Provided, however, That under this regulation, carriers outside of the State where such petroleum was produced may receive from other carriers for such transportation and may transport any petroleum without requiring such affidavits and shall not be subject to any liability or penalty for or on account of so receiving or transporting the same; provided, further, That with respect to the products of petroleum any carrier or carriers may receive from other carriers for such transportation such products if the affidavit required for Class "B" shipments is furnished to the originating carrier and due endorsement of its receipt is stamped upon the shipping papers.

Provided further, That the provisions of this regulation shall not apply to shipments of the products of petroleum by rail in less than carload lots.

Provided further, That where shipments of petroleum or the products thereof are offered for shipment in intrastate commerce and are subsequently in any manner diverted into interstate commerce, in whole or in part, the

interstate carrier may not accept for shipment such petroleum or such products.

Provided further, That the term "area where produced" as used in this regulation, for the East Texas and Oklahoma City fields, respectively, shall include:

[fol. 22] 1. For the East Texas field, the counties of Upshur, Smith, Gregg, Cherokee, Rusk and Harrison in the State of Texas, and that portion of the State of Louisiana adjoining Harrison County which is included with the area described as follows: (including boundary points named): Beginning at a point on the Louisiana-Texas State line opposite the northeast corner of Harrison County, Texas, east to the Morringsport on the Kansas City Southern Ry.; thence southeast to Cash Point on The Texas and Pacific Ry.; thence east to Vanceville on the St. Louis Southwestern Ry. Co.; thence southeast to Adner on the Louisiana and Arkansas Ry Co.; thence south to Bodcau on the Illinois Central R. R.; thence southwest to Curtis on the Louisiana Arkansas and Texas Ry. Co.; thence southwest to Lucas on The Texas and Pacific Ry. Co.; thence west to Forbing on the Kansas City Southern Ry.; thence southwest to Keithville on the Southern Pacific Lines and The Texas and Pacific Ry. Co.; thence northwest to the southeastern corner of Harrison County at the Louisiana-Texas State line; and thence to the point of beginning.

2. For the Oklahoma City field, the area within a 15-mile radius of Oklahoma City, Oklahoma. As amended by Order of July 25 and August 2, 1933.

VII

All persons, natural or artificial, embraced within the terms of Section 9(c) of the National Industrial Recovery Act (Public No. 67, 73rd Congress) and the Executive orders and regulation issued thereunder, shall keep and maintain available for inspection by the Division of Investigations of the Department of the Interior adequate books and records of all transactions involving the production and transportation of petroleum and the products thereof.

[fol. 23] VIII

All reports required by these regulations shall be filed with the Division of Investigations of the Department of

the Interior in Washington, D. C., or with such regional agencies as may be from time to time designated by the Division of Investigations.

IX

Each and every false declaration in any statement under oath required by these orders and regulations, or each and every failure to file reports or to keep and maintain adequate records, as required by these orders and regulations, and any participation by any officer or agent of a corporation in any acts of commission or omission in performing the duties described by these orders and regulations shall constitute a violation under the terms of Section 9(c) of the National Industrial Recovery Act (Public No. 67, 73rd Congress).

X

These regulations may be suspended in whole or in part by the Secretary of the Interior in any region, area, field, pool, or as applied to any particular properties or wells whenever, in his discretion, he deems their application unnecessary for the proper enforcement of the said act or orders issued thereunder, but no such suspension shall relieve any person, natural or artificial, from the duty of complying with the aforesaid act and orders; these regulations may be by him at any time amended or changed in whole or in part.

XI

In order to carry out the purposes of said Executive orders of July 11, and July 14, 1933, and of these regulations, the word 'petroleum' when used in these regulations, [fol. 24] singly, and separate and apart from 'the products thereof' shall be understood to mean petroleum in its crude form; and the 'product or products of petroleum' or 'Petroleum product or products' shall be understood to mean such products of petroleum as are ordinarily shipped or transported by pipe line, tank car, tanker, tank trucks and gasoline, nap-tha, fuel oil, kerosene, distillates, road oil, gas oil, blended gasoline, refined oil, and lubricating oil.'' Added by Order of July 25, 1933.

XII

Such pipe lines and gathering systems as serve areas in which producers and/or shippers are required to furnish

an affidavit or affidavits with the tender for shipment of petroleum shall file a statement under oath, sworn to before any duly authorized State or Federal officer not later than the fifteenth day of each and every calendar month beginning with August 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following information for the preceding calendar month:

(1) The residence and post-office address of the pipe line or gathering system.

(2) The place and date of all receipts of petroleum, the names and business addresses of the producers and consignor (principals and agents) from whom petroleum was received, and the amount received of such petroleum from each producing property properly identified.

(3) The disposition of said petroleum, including the place and date of delivery, the amount delivered, the names and business addresses of consignees to whom delivered, [fol. 25] and the amount of petroleum held in storage or otherwise at the beginning and end of said calendar month. Added by Order of July 25, 1933.

XIII

When any affidavit and/or other sworn statement under oath is required by these regulations to be tendered or filed by any person such affidavit and/or statement must be tendered or filed by the real party in interest owning, producing, purchasing, shipping, refining or otherwise dealing with the petroleum or the products thereof involved in the transaction or transactions which are the subject of such affidavit or statement.

Provided however, That such affidavit or statement may be tendered or filed by a duly authorized agent of such real party in interest, when proof of such authorization has been filed with the Division of Investigations of the Department of the Interior on or before the date of the making or filing of said affidavit or statement. Added by Order of July 25, 1933.

Having determined that the enforcement of the Executive orders of July 11 and July 14, 1933, prohibiting the

transportation in interstate and foreign commerce of petroleum and the products thereof illegally produced or withdrawn from storage, does not require the complete application of the regulations prescribed July 15, as amended July 25, 1933, pursuant to such orders, except in certain regions, the operation of such regulations is hereby limited and extended as follows:

1. Regulation VI is hereby suspended except in so far [fol. 26] as it affects shipments of petroleum or its products from the East Texas and Oklahoma City areas, as hereinafter defined, when such petroleum has been produced in whole or in part in such areas or such products have been derived in whole or in part from petroleum produced therein.

2. The affidavits required by Regulation VI shall be furnished in duplicate.

3. The first general proviso to Regulation VI is hereby amended to read as follows: (Note—The amendment has been incorporated in the Regulation, the full text of which appears at PP. 6716).

4. The last general proviso to Regulation VI is hereby amended to read as follows: (Note—the amendment has been incorporated in the Regulation, the full text of which appears at PP. 6716).

5. Regulation IV is hereby suspended except in States, fields or areas in which reports are required each month from producers of petroleum under a regulation or regulations issued by any Board, Commission, Officer, or other duly authorized agency of the State acting under a State proration law.

6. Regulation V is hereby suspended except in so far as it affects purchasers, shippers and refiners of petroleum, deriving such petroleum in whole or in part from the East Texas and Oklahoma City areas.

7. Regulation XII is hereby suspended except in so far as it affects pipe lines or gathering systems serving the East Texas and Oklahoma City areas.

This order shall not affect any shipment in interstate or foreign commerce of petroleum or the products thereof, produced or withdrawn from storage in violation of State

law or valid regulation issued thereunder, and the penalties [fol. 27] prescribed by these regulations and the orders of July 11 and July 14, 1933, of the President of the United States issued pursuant to the authority vested in him by section 9(c) of the act of June 16, 1933, known as the "National Industrial Recovery Act", shall remain in full force and effect.

Approved and Promulgated this 2nd day of August, 1933.

Harold L. Ickes, Secretary of the Interior.

EXHIBIT "B" TO AMENDED BILL OF COMPLAINT

Railroad Commission of Texas, Oil and Gas Division

Oil and Gas Dockets 108, 120, 123, 124, 125, 126, 128, 129 and 132

In re Conservation and Prevention of Waste of Crude Petroleum and Natural Gas in the State of Texas

Austin, Texas,
September 5, 1933.

Emergency Order

Whereas, by decree of the Congress of the United States of America a national emergency has been declared to exist; and

Whereas, under the authority of the National Industrial Recovery Act a hearing was had in the City of Washington, D. C., and a code of fair competition for the petroleum industry was promulgated; and,

[fol. 28] Whereas, under date of August 19, 1933, the President of the United States, Franklin D. Roosevelt, approved the Code of Fair Competition for the Petroleum Industry; and,

Whereas, we have been advised by the Hon. Harold L. Ickes, Administrator of the Code, that the allowable production for the State of Texas, effective 7 a. m., September 8, 1933, will be 975,200 barrels daily; and,

Whereas, it is the desire of the Railroad Commission of Texas to cooperate fully with the President of the United States and the administrator of the Petroleum Code under the National Recovery Administration; and,

Whereas, under the last regular order of the Railroad Commission of Texas the allowable production of Texas was set at a figure which is presently 1,216,000 barrels; and,

Whereas, under the laws of the State of Texas the Railroad Commission of Texas is required to give ten days notice of a hearing, and said notice has this day been given setting the hearing at the earliest possible moment, namely —9 a. m., September 16, 1933, at Austin, Texas, but, realizing that this date is eight days later than the date set by the National Administration, and wishing to fully cooperate with the National Administration;

We, therefore, hereby order that all fields and all wells in Texas except "marginal wells" as defined by the laws of Texas be reduced in daily allowable production by exactly 25%, which amount of reduction will bring the allowable production of the State of Texas within the figure set by the National Administrator as the amount of oil which [fol. 29] can be produced in Texas and allowed under the Code to go into the channels of interstate commerce.

It being the provisions of the Code that should such quotas allocated in conformity with the provisions of this Section not be made within the State or if the production of petroleum within the State exceed the allowance within such State, the President may regulate the shipment of petroleum or petroleum products in or affecting interstate commerce out of said State to the extent necessary to effectuate the purpose of the National Industrial Recovery Act, and, since the Railroad Commission of Texas desires to make possible the smooth administration of the orders of the Administrator of the Code of Fair Competition for the Petroleum Industry, the Railroad Commission of Texas is making this temporary order to be effective until further orders which shall come after the date of said hearing which has been called for September 16, 1933, in conformity with the laws of the State of Texas. This order shall become effective at seven o'clock A. M., September 8, 1933.

Railroad Commission of Texas, by Lon A. Smith, Chairman; C. V. Terrell, Commissioner; Ernest O. Thompson, Commissioner.

Attest: C. F. Petet, Secretary. (Seal.)

[fol. 30] EXHIBIT "C" TO AMENDED BILL OF COMPLAINT

Railroad Commission of Texas, Oil and Gas Division

Oil and Gas Dockets 108, 120, 123, 124, 125, 126, 128, 129 and 132

In re Conservation and Prevention of Waste of Crude Petroleum and Natural Gas in the State of Texas

Austin, Texas,
September 30, 1933.

Amended Temporary Emergency Order

Pursuant to hearings held according to notice in above cause, and evidence presented to this Commission, and to authority conferred by the conservation laws of the State of Texas:

It is hereby ordered that the Emergency Order of this Commission entered September 5, 1933, and effective at 7 o'clock A. M., September 8, 1933, be amended so as to bring to total production of crude oil of the State of Texas within the amount allotted to the State of Texas, namely—965,000 barrels, by the Administrator of the Code for the Petroleum Industry under the National Recovery Act so as to hereafter and until superseded read as follows:

"We, therefore, hereby order that all fields and all wells in Texas except 'marginal wells' as defined by the laws of Texas be reduced in daily allowable production as of Sep-[fol. 31] tember 7, 1933, by exactly 26% which amount of reduction will bring the allowable production of the State of Texas within the figure set by the National Administrator as the amount of oil which can be produced in Texas and allowed under the Code to go into the channels of interstate commerce. Where there is no limit to production of crude oil set by order of the Commission the average daily production for the week ending August 26, 1933, shall be the basis upon which the 26% reduction shall be calculated. No exception to the foregoing will be granted under this order for any cause.

"It being the provisions of the Code that should such quotas allocated in conformity with the provisions of this

Section not be made within the State or if the production of petroleum within the State exceed the allowance within such State, the President may regulate the shipment of petroleum or petroleum products in or affecting interstate commerce out of said State to the extent necessary to effectuate the purpose of the National Industrial Recovery Act, and, since the Railroad Commission of Texas desires to make possible the smooth administration of the orders of the Administrator of the Code of Fair Competition for the Petroleum Industry, the Railroad Commission of Texas is making this temporary order to be effective at seven a. m., October 1, 1933."

Railroad Commission of Texas, by Lon A. Smith, Chairman; C. V. Terrell, Commissioner; Ernest O. Thompson, Commissioner.

Attest: C. F. Petet, Secretary. (Seal.)

[fol. 32] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ANSWER OF DEFENDANTS TO AMENDED BILL OF COMPLAINT—Filed Nov. 6, 1933

Come now the defendants, A. D. Ryan, J. Howard Marshall and S. D. Bennett, and for their answer to the Amended Bill of Complaint state:

1. The Amended Bill of Complaint is fatally defective in that there is a misjoinder of parties plaintiff, as shown upon the face of the Bill;

2. The Amended Bill of Complaint is fatally defective in that there is a misjoinder of causes of action, as shown upon the face of said Bill;

3. The said Amended Bill of Complaint is fatally defective in that there is a misjoinder of parties defendant, as shown upon the face of said Amended Bill;

4. The said Amended Bill is fatally defective and should be dismissed so far as the same attempts to attack the validity of any order of the Railroad Commission of Texas for the reason that neither the State of Texas nor said

Railroad Commission is made a party defendant, all as shown upon the face of the Amended Bill, with particular reference to Paragraph VIII thereof, which paragraph should be dismissed;

5. The said Amended Bill fails to state the cause of [fol. 33] action against the defendants and should accordingly be dismissed for the following reasons: (a) The Act of Congress of June 16, 1933 (Public 67—73d Congress) is valid and constitutional; (b) The promulgation or Order of the President of July 11, 1933 is valid and constitutional; (c) The promulgation or Order of the President of July 14, 1933 delegating the President's powers under Section 9(c) of said Act to the Secretary of the Interior is valid and constitutional; (d) The Regulations of the Secretary of the Interior of July 15 and 25 and August 2, 1933 are valid and constitutional; (e) The orders of the Railroad Commission of the State of Texas limiting the production of oil within said State, including production by the individual plaintiff, are valid under the Constitution and Statutes of the State of Texas—all as shown upon the face of said Amended Bill of Complaint;

6. The said Amended Bill of Complaint is fatally defective so far as the same attempts to raise any question as to the validity of the orders of the Railroad Commission of Texas in that the State of Texas or the Railroad Commission of Texas are indispensable parties defendant.

Further answering, they admit the allegations of the first unnumbered paragraph of said Amended Bill of Complaint as to the residence of the parties, but they deny any alleged joint interest on the part of the plaintiffs, and they further deny all other allegations of fact set forth in said first unnumbered paragraph of the complaint.

I

They have no knowledge as to the allegations of paragraph I of the Amended Bill of Complaint as to the ownership and operation by plaintiff, Panama Refining Company, of a crude oil refining plant, its lack of ownership of oil [fol. 34] or gas leases or wells, and its production and purchase of oil, and they accordingly deny the same and call for strict proof thereof so far as said allegations are material; they deny each and every other allegations of said

paragraph I of the Amended Bill of Complaint, except they admit that the Panama Refining Company sells gasoline and other products of petroleum to dealers, both within and outside of the State of Texas, and they aver that said company is accordingly engaged in interstate commerce in petroleum and the products thereof;

II

They admit the allegations of paragraph II of said Amended Bill of Complaint;

III

They deny each and every of the allegations of paragraph III of said Amended Bill of Complaint;

And further answering the allegations of said paragraph III of the said Amended Bill of Complaint, they aver that the oil field commonly known as the East Texas Oil Field located in the State of Texas in the Counties of Smith, Gregg and Rusk, in which field Kilgore, Texas, is located, and in which field the plaintiff company operates a refinery and the plaintiff individual owns an oil and gas producing well, is an oil field in which there are and were at the time of the filing of said Amended Complaint more than 11,000 producing oil wells and approximately fifty-seven refineries, which latter, including the refinery operated by the plaintiff company, obtain crude oil or petroleum from the wells of said field, and manufacture therefrom gasoline, kerosene and other products of petroleum; that the daily legal production of oil in said field, under the laws of the [fol. 35] State of Texas and the orders of the Railroad Commission of the State of Texas, is limited to the legal production of approximately 400,000 barrels per day; that for a period of many months last past the actual production of oil in said field has been largely in excess of said legally authorized production, such excess being produced in violation of the laws of the State of Texas and the orders of the Railroad Commission of the State of Texas made thereunder; that such excess production, known as "hot oil," that is, bootleg oil, has been for many months and is now sold greatly below the posted price in said field of legally produced oil, is run into refineries, sold and transported in intrastate and interstate commerce at prices greatly below the price of legally produced oil; and many refineries

in said field refine products, including gasoline, from said illegally produced oil, and sell, dispose of and transport large quantities thereof at a price far below the posted price of said products in said field, without paying the State and Federal taxes therein, in intrastate and interstate commerce; that there are many owners and producers of oil in said field who comply with the laws of the State of Texas and the orders of said Railroad Commission, who pay the State and Federal taxes due, but who are unable to compete with the aforesaid illegal production of petroleum or with the sale of the refined products thereof; that the sale and production and transportation of said illegally produced oil and the products thereof affect the price of crude oil and its products both in the State of Texas and in the whole of the United States, particularly on the Atlantic and Pacific coasts and in the mid-continent area, and thus the production and refining of petroleum in the East Texas Oil Field directly affects interstate commerce in crude petroleum and its products; that the production and refining of petroleum in the East Texas Oil Field and the transpor-
[fol. 36] tation thereof from said field into other States by rail, pipe line and water directly affects interstate commerce in petroleum and its products, in that, of the whole production of petroleum in the United States, more than one-third is derived from the East Texas Oil Field. The chief products of said petroleum are gasoline, kerosene and fuel oil of which millions of barrels are daily consumed throughout the United States, and the production and refining of the oil produced in said field has a controlling influence upon the price structure of crude oil and it products throughout the United States, directly involves the use of interstate transportation facilities throughout the United States, particularly in the mid-continent area and along the Gulf, Atlantic and Pacific coasts, including the facilities, pipe lines, railroads, motor vehicles and water; that large quantities of illegally produced oil in said East Texas Oil Field and the products derived therefrom have been and were at the time of the filing of the Amended Complaint and still are being produced and shipped from said East Texas Field by all methods of transportation, in interstate commerce, although said oil has been and is being produced in violation of the laws of the State of Texas and, though illegally produced, such oil and products have been for a

long period of time and are now being sold at cut-rate prices in competition with petroleum and the products thereof produced and refined in accordance with the laws of the State of Texas and of the United States;

Further answering said paragraph of said Amended Bill, defendants aver that by reason of the fact that the East Texas Oil Field produces such a large proportion of the total crude oil production of the United States, from which gasoline and other products are manufactured and sold throughout the United States, and by reason of the further fact that approximately 82 per cent of all oil produced in [fol. 37] said field enters the stream of interstate commerce, the regulation of interstate commerce of oil and its products necessitates the requirement of information and inspection as to the production of crude oil, the refining thereof and the shipment thereof in and from the said East Texas Oil Field, in which the plaintiffs allege they respectively own a refinery engaged in interstate commerce and producing wells;

Further answering said paragraph, defendants aver that the regulations complained of are reasonable, desirable and necessary to administer and enforce Section 9(c) of the National Industrial Recovery Act of June 16, 1933, and the President's orders issued thereunder referred to in the Amended Complaint;

IV

They admit the allegations of fact set forth in paragraph IV of said Amended Complaint, but they deny that by reason of said facts the plaintiffs are being deprived of or have been deprived of their liberty without due process of law or in contravention of the Fifth Amendment of the Constitution of the United States.

V

They deny that the defendant, A. D. Ryan, has by force and over the objection of the plaintiff company and its officers and agents form time to time come upon the property of the plaintiff and gauged its tanks and inspected its pipe lines and other equipment, and on the contrary they aver that they have never gone upon the property of said plaintiff over objection and gauged tanks or inspected pipe lines or equipment; they admit that they have requested

the books and records of the plaintiffs for information and inspection, but they deny that any of these matters [fol. 38] are an infringement on the rights of the plaintiffs or in violation of the Fourth Amendment of the Constitution of the United States; and further answering said paragraph, they state that the defendant, Ryan, claims a right, under the regulations of the Secretary of the Interior complained of, to gauge plaintiff's tanks and inspect its books and records, not, however, in an attempt to obtain evidence upon which to base criminal complaint against plaintiff, but as a proper, reasonable, desirable and necessary procedure in connection with the prohibition of shipment in interstate commerce of petroleum or its products produced or withdrawn from storage in violation of the laws of the State of Texas and order made thereunder;

VI

Answering the allegations of paragraph VI of said Amended Bill of Complaint, the defendants admit that the plaintiff, Anding, is merely producing oil within the State of Texas, but they deny that he does not transport any oil outside of said State, and in this connection the defendants further aver that even though said particular individual, Anding, limited his operations to production within the State of Texas and did not transport oil outside of said State, nevertheless the regulations complained of are reasonable, proper, desirable and necessary in connection with the prohibition from shipment in interstate commerce of petroleum or its products produced or withdrawn from storage in violation of State law or order by reason of the matters and things hereinabove, in paragraph III set forth, and for the further reason that a reasonable method of enforcing said Section 9(c) of the Act of June 16, 1933, and the President's said orders issued thereunder, is by obtaining the information required from producers and refiners by the regulations complained of, and that this in- [fol. 39] formation, in order to be of assistance in enforcing said Section 9(c) of said Act, must necessarily be obtained from all producers and refiners in the East Texas Oil Field so that the sources of illegally produced oil and its products may be ascertained.

VII

They deny each and every allegation of paragraph VII of said Amended Complaint, except that they admit that they exposed on the property alleged to belong to the plaintiffs what is known as a "by-pass," but they did not destroy or sever the same; that said "by-pass" had been installed by the plaintiff, Anding, so that oil could be run through it without being gauged as required by the State of Texas, and so that said oil could be run in a hidden and secret manner, so that taxes could be evaded and so that oil could be produced and transported therethrough in excess of the lawful production allowed the plaintiff under the laws and orders of the State of Texas; and they deny that the exposure of said "by-pass" violated any constitutional right of the said plaintiff under the Fourth Amendment of the Constitution of the United States.

VIII

Answering the allegations of paragraph VIII of said Amended Complaint, the defendants deny each and every allegation of fact therein set forth, and in this connection they aver that even were it true, which the defendants deny, that the orders of the Railroad Commission of Texas promulgated September 5 and September 30, 1933, and October 18, 1933, were invalid, such conclusion would be immaterial for the reason that Title 102, R. C. S. of 1925 and the amendments thereto, being statutes of the State of Texas, [fol. 40] authorizes the Railroad Commission of the State of Texas to fix the allowable production of crude oil in the State of Texas, and prior to said orders of September 5 and 30, and October 18, there had been duly and legally promulgated by said Railroad Commission valid orders to that end, which would still be in effect notwithstanding such invalidity of the orders of said Commission of September 5 and 30, and October 18, or any of them, and the enforcement of said Section 9(c) of said Act of June 16, 1933, made and still does make it necessary and desirable to put into effect and to keep in operation the regulations complained of; and further answering said paragraph, these defendants aver that the authority of the Railroad Commission of the State of Texas under the laws of said State

to fix the allowable production of crude oil in said State is now in existence and has been since 1925, and the Railroad Commission of said State, in pursuance of said statute, has constantly and continuously, from time to time, duly made and promulgated orders fixing the allowable production of crude oil in said State, and has had for many years and now has a large field force aiding in the regulation and enforcement of such orders under the authority of said State with widespread, carefully prepared and competently maintained personnel and equipment, actively engaged for many years, and now so engaged, in endeavoring to secure compliance by producers and others engaged in the oil industry with the orders of said Commission from time to time made and promulgated; that the validity of the Federal regulations now complained of and the validity of all actions of the defendants thereunder and under statutes of the United States now complained of, depend in no manner upon the validty of the particular orders of September 5 and 30, and of October 18, 1933, referred to in said paragraph VIII of the Amended Complaint, said regulations not being in any sense limited in their application [fol. 41] by orders of the Railroad Commission last above referred to, but being general in application for the purpose of prohibiting the transportation in interstate and foreign commerce of petroleum and its products produced or withdrawn from storage in violation of any law or order of the State of Texas or any agency thereof; that even if said orders of the Railroad Commission of Texas of September 5 and 30, and October 18, 1933, were for any reason invalid, which the defendants deny, there would nevertheless be in full force and effect in said State valid orders of said Commission theretofore made and promulgated limiting as to each well in said State the daily allowable production of crude oil thereform, and there would remain in effect the statutes of the State authorizing the Railroad Commission of Texas to exercise constantly and continuously the function of control of production of oil in said State; that said Commission has constantly exercised said function for a long period of time; that the statute authorizing it so to do is valid and in effect; that said Commission and the State of Texas is now and has been for a long period of time engaged in the enforcement of orders promulgated under said statute; that the promulgation of

such orders is the duty of said Commission which it must continue to perform;

And further answering said paragraph VIII of said Amended Complaint, the defendants state that said orders of the Railroad Commission of the State of Texas, promulgated September 5 and 30, and October 18, 1933, must be taken as valid in this suit for the reason that the same may not be collaterally attacked or indirectly attacked in a court of the United States in a suit to which members of the said Railroad Commission are not parties or to which the State of Texas is not a party, and in which it is sought to enjoin only the enforcement of regulations issued under the [fol. 42] authority of the United States and ont of the State of Texas.

And further answering said paragraph VIII of the Amended Complaint, these defendants state that the validity of said last referred to orders of the Railroad Commission of Texas may not be determined in this suit for the reason that such determination is not a Federal question or one alleged in the Amended Complaint upon any ground giving rise to Federal jurisdiction, and the question of the validity of said orders of said Commission is a matter which may be determined only by the courts of the State of Texas in the absence of attack upon said orders upon any Federal ground;

Further answering paragraph VIII of said amended Bill of Complaint, the defendants deny that any of the orders of the Railroad Commission of the State of Texas promulgated September 5 and 30, and October 18, 1933, are invalid for any reason, and they deny that any one of said orders was made without due and proper hearing or in an arbitrary or capricious manner, or without evidence; and in this connection they aver that the said orders, as appears upon the face of the copies of the order attached as Exhibits to the Complaint, were made after consideration of such evidence and hearing as was deemed necessary by said Commission, and that such evidence and hearing was, as shown upon the face of said orders, sufficient under the statutes of the State of Texas;

And further answering said paragraph VIII, these defendants state that the plaintiffs are not entitled to complain in this cause of any of said orders, or to attack the validity thereof, for the reason that the complaint fails to

allege, and the fact is, that the plaintiffs have not exhausted their remedies for review of the edicts of said orders granted to the plaintiffs under the statutes of the State of [fol. 43] Texas, which statutes give the plaintiffs the right, if dissatisfied with any of said orders, to petition in a court of competent jurisdiction in Travis County, Texas, and thus obtain a speedy determination of the matter, as provided in Sec. 6 of Ch. 313 of the Acts of 1929, 41st Leg. of the State of Texas;

And further answering said paragraph VIII, the defendants state that there are no facts set forth therein or in the Amended Bill showing in what respect, or that in any manner the plaintiffs have been deprived of any right, or have been injured in any manner by either of the said orders of the Railroad Commission of the State of Texas;

Further answering the Amended Bill of Comp*any*, the defendants state that under the provisions of said Act of June 16, 1933 there was duly adopted and approved by the President, to wit, August 19, 1933 a Code of Fair Competition for the Petroleum Industry, and thereafter, to wit, September 13, 1933 there were adopted and approved by the President, under the provision of said Act, certain Modifications to said Code, under the provisions of which Code and Modifications the Federal agency therein referred to was authorized to estimate the market or consumers' demand in the United States of Petroleum and to allocate said demand among the several oil producing states; that under the provisions of said Act, Code, and Modifications the Department of the Interior was, to wit, the 27th day of August, 1933, duly, legally designated by the President as the Federal agency so to do, and the Secretary of the Interior was on the same day designated the Administrator of said Code and Modifications; that thereafter and from time to time the said Federal agency has estimated said market or consumers' demand and has allocated same among the oil producing states, including [fol. 44] the State of Texas, and has certified the same to the Governor and Railroad Commission of Texas; that under the Constitution and Statutes of the State of Texas the Railroad Commission of Texas has duly and legally after hearing and in compliance with the Statutes of Texas and in order to prevent waste, fixed the market demand of oil produced in the State of Texas in conformity with the

allocation to Texas made by said Federal agency and certified as aforesaid, and has fixed the allowable production in the East Texas Oil Field allocated to said field, including all the wells thereon, the allowable production of said field and wells, which is greatly less than the potential production thereof; and the order of said Commission bearing date of September 30, 1933, copy of which is attached to the said Amended Bill as Exhibit "C" is one of said orders of said Railroad Commission of Texas; and prior to the adoption of said Code of Fair Competition and prior to any estimation of market or consumers' demand and certifications thereof made by the Department of the Interior, and on, to wit, the 13th day of June, 1933 and, to wit, the 22d day of April, 1933, the said Railroad Commission of Texas, in full compliance with the laws of the State of Texas, made and issued valid orders of the allowable production of said East Texas Oil Field and the wells therein, under the Constitution and laws of said State; and since said dates and now there has been and are vast quantities of petroleum and products thereof stored in said East Texas Oil Field, which petroleum was produced in violation of said orders; and since said subsequent orders of the Railroad Commission of Texas and the acts of the said Federal agency as aforesaid there have been and are tremendous quantities of petroleum and the products thereof stored in the East Texas Oil Field, which petroleum was produced in violation of said orders of the Railroad Commission of Texas.

[fol. 45] Further answering said Amended Complaint, defendants state that paragraphs IV, V and VII of the regulations, being the only part of said regulations of which the plaintiffs complain, are reasonable, desirable and necessary in order that the Act of Congress and said order of the President may be made effective; that they do no more than require the furnishing of certain information desirable, advisable or necessary in the proper and orderly enforcement of the Act of Congress and the President's order thereunder, and they are accordingly valid, and a proper exercise of the power to make rules and regulations granted by the Act of Congress;

And in this connection they aver that the information called for by said Regulation IV, applicable to a producer,

is information necessarily within the knowledge of the producer and is only such information as is reasonably calculated to aid in preventing the transportation of illegally produced crude oil and the products thereof; that the information called for by said Regulation V, applicable to a refiner, is only such information as is necessarily within the knowledge of said refiner and is the information desirable, advisable and necessary to bring about the enforcement of said Act and President's order and is such information as is within the knowledge of the refiner, which he is capable of furnishing and which is necessary to be furnished in order that the Government may enforce its said statute and the President's order thereunder; that the regulations have been fitted largely to the bookkeeping systems of the refiners affected, the reports may be easily made, are being made regularly by a large number of refiners, and the Government representatives are cooperating with the refiners in a courteous manner in furnishing information and collecting the reports so as not to burden such refiners;

[fol. 46] That in the East Texas Field here involved local refineries are often tied directly to wells; that in order to check production it is accordingly necessary to check purchases by refineries; that refineries have been and now are the chief instrumentalities for the disposition of illegally produced oil, making it necessary in order to cure the evil to which the law is directed that reports be required of refineries; that refineries in the field are an adjunct of loading racks from which enormous amounts of oil are shipped; that the East Texas Field is of great territorial extent, with innumerable refineries in close proximity to producing wells, with innumerable by-passes and intricate systems of pipe lines, with facile means of railroad and truck movements of crude oil and refined products, and the necessity of reports from refineries is further shown by the impossibility by checking pipe lines and producers, due to the innumerable pipe lines of unknown character and ownership and by the impossibility of checking the ownership of many producing properties, with rapid changes of name and transfers of title, innumerable temporary incorporations, the switching of title back and forth and into quickly formed corporations, all of which is a part of a gigantic evasion of State and Federal law; that the obtaining of

reports from refineries is a definite and certain source of information necessary to enforce the law; that enormous quantities of illegally produced oil and the products thereof have been for a long period of time run through refineries in said field, in violation of State law, and tremendous quantities of this oil and its products have beeen constantly entering the stream of interstate commerce through refineries;

That the East Texas Oil Field has a potential production of many millions of barrels of crude oil per day; that now and for a long time past hundreds of thousands of barrels of crude oil and the products thereof produced in [fol. 47] the East Texas Oil Field have been shipped in the interstate and foreign commerce; that hundreds of thousands of barrels per day of this production and refining have been and now are produced in violation of the orders of the State Railroad Commission of the State of Texas and the laws of the State of Texas, and since the 11th day of July, 1933, and up to the present time likewise in violation of said Act of Congress of June 16, 1933; that this production and refining is followed by the shipment in interstate and foreign commerce of such oil and its products, and this has had and does now have the effect of demoralizing the whole petroleum industry of the United States, representing an investment of more than twelve billions of dollars, by shipment of such oil and the products thereof in interstate commerce and the sale thereof without payment of State or Federal taxes, at below reasonable recovery and marketing cost, and with underselling by unfair competition petroleum and its products produced, shipped and sold in conformity to State and Federal law, upon which taxes have been paid; that the only reasonable means of enforcing the State and Federal laws prohibiting production and shipment in violation of State and Federal law is through the obtaining of information, as to the source of the production and as to the refining thereof, from producers and refiners as sought by the regulations complained of; and that this is further necessary and desirable so that the law-abiding producers and refiners and shippers may obtain a market in interstate commerce for their products at a fair and reasonable price free from the competition of illegally produced oil and its products;

That the crude oil of the United States and particularly of the East Texas Oil Field is a natural resource which enters daily into and affects interstate commerce through [fol. 48] the mid-continent marketing area by rail, pipe line and water transport, mingled in large part with the crude and refined products of other States and fields; that the prevention of waste of this natural resource and the proper regulation of interstate commerce therein makes mandatory the regulation of production and the shipment of refined products thereof and this can not successfully be accomplished except through the obtaining of information such as is required by Regulations IV, V and VII complained of.

Further answering, the defendants aver that the complaint is fatally defective in that, as shown upon the face of the Amended Complaint, the Secretary of the Interior is an indispensable party defendant;

Further answering, the defendants allege that in the State of Oklahoma and in the State of New Mexico there have been enacted and are now in force State statutes limiting the production and withdrawal from storage of petroleum; that said States border on the State of Texas; that from and into said States pass transportation facilities which also pass through the East Texas Oil Field, through and by means of which petroleum and petroleum products are constantly being transported from and to New Mexico and Oklahoma, commingled with and/or shipped or transported simultaneously with and by means of the same facilities as petroleum and/or petroleum products originating in Texas; that large quantities thereof go into interstate commerce; that in orderr to aid in effectuating the purpose and intent of the act of Congress of June 16, 1933, it is necessary and desirable to have the regulations complained of to avoid easy evasion and frustration of said act and by such evasion and frustration of the act of Congress to nullify the same; and this is true whether or not the said orders of the Railroad Commission of Texas are valid;

[fol. 49] Further answering the complaint, these defendants allege that there is now in full force and effect under the statutes of the State of Texas, duly authorized thereunder, a valid order or valid orders promulgated by the Railroad Commisison of said State, fixing the allowable

production of crude petroleum within said State from the wells therein located, including more than 11,000 producing wells in the East Texas Oil Field; that said order or orders have never been held invalid in a court of competent jurisdiction, are now in full force and effect, and are being administered by said Railroad Commission of the State of Texas under the statutes of said State, including the orders of said Commission dated June 13, 1933, September 5 and 30, 1933, and October 18, 1933; that is, one or all of said orders; that production in said State and in said East Texas Oil Field exceeds the amount limited under any of said orders, and such excess production and the products thereof move in large part in interstate commerce, that 82 per cent of all the production in said East Texas Oil Field, and the products thereof, moves from said Field into interstate commerce, and that this condition has existed for more than six months last past, and exists at the present time.

Wherefore, the defendants pray that the rule be discharged, the application for injunction denied, the Amended Bill of Complaint be dismissed, and that the defendants may be hence dismissed with their costs.

J. Howard Marshall II, A. D. Ryan, S. D. Bennett, by Charles Fahy, Defendants. Charles Fahy, J. Howard Marshall II, Attorneys for Defendants, Washington, D. C.

[fol. 50] *Duly sworn to by A. D. Ryan. Jurat omitted in printing.*

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

STIPULATION AS TO ISSUES, ETC.—Filed March 17, 1934

It is hereby stipulated and agreed by and between the attorneys for all of the parties in the above entitled action as follows:

[fol. 51] (1) That the issues tried and determined in said above styled and numbered causes were those fixed by the Amended Bill of Complaint filed by the complainants,

Panama Refining Company, and A. F. Anding on October 23, 1933, and the answer of defendants, A. D. Ryan, S. D. Bennett, and J. Howard Marshall, to the Amended Bill of Complaint filed November 6, 1933.

(2) That all of the evidence introduced by any one of the complainants should be considered as though introduced by each of them within the issues framed, as described in Paragraph (1) above, and that all evidence introduced by the defendants with reference to any of the complainants should be considered with like force and effect as though introduced with reference to all of them.

In witness whereof, the attorneys of record have hereunto signed their names this the 15th day of March, A. D., 1934.

F. W. Fischer, Attorneys for Complainants. Chas. I. Francis, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 52] In United States District Court eor the Eastern District of Texas, Tyler Division

In Equity No. 635

and

Consolidated Causes Nos. 636 and 640

Panama Refining Company et al., Plaintiffs,

vs.

A. D. Ryan et al., Defendants

Statement of Evidence—Filed April 2, 1934

Be it remembered that the above-entitled cause came on regularly for trial before the above Court sitting in Equity on the 6th day of November, 1933, upon the issues formed by the Amended Bill of Complaint and the Amended Answer thereto Mr. F. W. Fischer appearing as counsel for plaintiffs and Mr. Charles Fahy appearing as counsel for defendants.

Plaintiffs' Case

Offers in Evidence

Plaintiffs introduced in evidence certified copies of Orders of the Railroad Commission of Texas dated September 5, 1933, September 30, 1933, and October 27, 1933, which, so far as is material to this cause, limited the daily production of crude petroleum from wells in the East Texas Field to fixed percentages of their average hourly potential producing capacity as determined by the Commission. The most recent of these orders limited daily production to 5.75 per cent of such hourly potential.

Plaintiffs introduced in evidence a statement by Tom Potter, who stated that he is Vice-President of the Panama [fol. 53] Refining Company, one of the plaintiffs in this case; that a few days before the filing of this suit, agents of the Department of the Interior, who informed him that they were working under the direction of A. D. Ryan, came upon the property of the Panama Refining Company and stated that they desired to gauge the tanks on the property and examine the same; that he stated to said agents that he would not consent for them to gauge the tanks and come upon the property; that they replied they had been sent out by Mr. Ryan to gauge the tanks and were going to gauge them regardless of whether he protested or not; that in order to avoid personal difficulty with these agents, he made no further resistance and these agents did go upon the tanks and property of the Panama Refining Company and gauged the tanks and inspected the property; that they stated to him they had instructions from Mr. Ryan to gauge these tanks and to examine the refining property as often as they saw fit. He further stated that thereafter, they came back upon the property during the night-time and gauged the tanks of the Refining Company and they demanded of him as the officer in charge of the Refining Company that he file reports as required by Paragraph V of the Regulations of the Department of the Interior, and that, at the time of these demands, they informed him that, if the reports were not furnished, criminal proceedings would be instituted against him.

Plaintiffs introduced in evidence a statement by A. F. Anding, who stated that he is one of the plaintiffs named

in this cause and is the owner of oil wells referred to in the [fol. 54] Bill of Complaint; that he is President of the Panama Refining Company, another plaintiff in this case; that on September 4, 1933, agents and representatives of the defendant, A. D. Ryan, came upon an oil well owned by him and located on the Ira Birdwell land, in the R. W. Smith Survey, Rusk County, without his consent or authority and dug up the pipe lines, known as the flow lines, from this well to his tanks, and over his protest and by force cut said line with a blow torch; that these agents, whose names are unknown to him, then and there informed him to report immediately to the defendant, A. D. Ryan; that in compliance with these instructions, he did report to A. D. Ryan who admitted that he had sent these agents and representatives upon the property for the purpose of inspecting and examining the same, and that he had the right and authority under the Rules and Regulations of the Secretary of the Interior to go upon the property and examine it and dig up the pipe lines thereon and disconnect the same if, in his opinion, such pipe lines constituted what is known as by-passes; that Mr. A. D. Ryan stated that under the Rules and Regulations of the Secretary of the Interior he had the right and authority as the representative and agent of the Secretary of the Interior to come upon the property and examine the same and dig up the pipe lines and gauge the tanks as often as he saw fit, in order to prevent the production of oil in excess of the Railroad Commission's order. He further stated that a few days prior to the filing of this suit, the agents and representatives of the defendant, A. D. Ryan, whose names he did not know, but who showed credentials as agents of the Department of the Interior and who said they were working under the instructions of the defendant, A. D. Ryan, came upon the premises of the Panama Refining Company for the purpose of gauging the tanks of the Refining Company; that these agents were informed [fol. 55] by Tom Potter, Vice-President of the Panama Refining Company and who was in charge of the property, that the officers of the Panama Refining Company would not consent to the gauging of the Refining Company's tanks; that these agents informed Mr. Tom Potter that regardless of whether he consented to such gauging or not they intended to gauge said tanks; that in order to avoid

personal conflict with said agents their entrance upon the property was not resisted; and that these agents did gauge the tanks of the Refining Company and subject the property to their examination and inspection.

Plaintiffs introduced in evidence copies of letters signed by Archie D. Ryan, which are in words and figures as follows, to-wit:

"United States Department of the Interior, Division of Investigations

Tyler, Texas, August 14, 1933.

Panama Refining Company, Kilgore, Texas.

GENTLEMEN: On August 27th, 1933, I mailed to you Questionnaire requesting that certain information be furnished me under authority vested in me by Executive Orders of the President of the United States on July 11 and July 14, 1933, under Section 9-C of the National Industrial Recovery Act (Public No. 67, 73rd Congress).

I am in receipt of this Questionnaire marked 'Panama Refining Company is covered by Federal Injunctions' [fol. 56] Signed 'Panama Refining Company, By Tom Potter, President'. I wish to call your attention to the fact that the information requested by me is for the Division of Investigations, Department of the Interior, the power of the Government empowered by the Secretary to carry out Section 9-C of the National Industrial Recovery Act, and whatever Federal Injunctions that you might have against the Railroad Commission of Texas have no effect against the enforcement of the orders of the Secretary of the Interior in enforcing Section 9-C of the National Industrial Recovery Act.

I am returning a new Questionnaire to you and demand that the information requested therein be furnished me within five days after the receipt thereof, and I wish to call your attention to Section 9-C printed on the back of the Questionnaire giving the penalties for not complying with that Section of the Act.

Your immediate attention to this matter is requested.

Yours very truly, (Signed) Archie D. Ryan, Special Agent in Charge."

"United States Department of the Interior, Division of Investigations

Tyler, Texas, October 23, 1933.

Ortiz Oil Company, Joinerville, Texas.

GENTLEMEN: This office is in receipt of your E-B report for the month of September, 1933 (marked 'October'), filed [fol. 57] with this office under Regulation IV of The Regulations issued by the Secretary of the Interior under dates of July 15, and 25, 1933.

This report shows an overproduction in excess of the proration laws of the State of Texas in the amount of 73 barrels. Immediately advise this office in affidavit form your reason for permitting this overproduction to occur.

Your very truly, (Signed) Archie D. Ryan, Special Agent in Charge."

Plaintiffs introduced in evidence a statement by J. W. Smith, who stated that on or about the first day of September, 1933, he was employed by the Bureau of Investigations of the Department of the Interior to investigate; that he remained in its employ for several days, resigning from said position about September 15th; that during this time he was working out of the office of A. D. Ryan, Chief Investigator, at Tyler, and under the direct supervision of Jimmie Inglish of Kilgore, who had charge of that territory; that the nature of his work was to gauge refinery and pipe line tanks; that his work, however, was confined to independent refineries and independent pipe lines; that his instructions from Jimmie Inglish and Mr. Whittier, who apparently received their instructions from Mr. Ryan, as they went back and forth from the office at Kilgore to the office at Tyler and were in constant telephone communication, were to go upon the tanks of refineries and pipe lines without their knowledge or consent and gauge their tanks and obtain evidence, if possible, as to whether or not they were shipping in interstate commerce oil that was produced in excess of the Railroad Commission's orders, that, in accordance with these instructions, he went from time to time [fol. 58] upon the tanks of the various independent refineries in the Kilgore District in search of evidence as to whether any of them were shipping excess oil or refining

excess oil and shipping the products produced therefrom in interstate commerce; that he never at any time asked any owner or refinery operator for permission to gauge their tanks and that he would turn in reports as to his findings to Jimmie Inglish.

He further stated that on or about the 6th or 7th of September, 1933, Jimmie Inglish advised him that the Panama Refining Company had brought a suit against Mr. Ryan and the Federal agents to restrain them from coming upon its property and to relieve them from making reports; that he was instruced to find some evidence against the Panama Refining Company as to its shipment of excess oil in interstate commerce or gasoline manufactured from excess oil; that in accordance with his instructions, he thereafter gauged the tanks of the Panama Refining Company without its knowledge in an effort to find evidence of it receiving excess oil or shipping excess oil or gasoline manufactured from excess oil, but was unable to find any evidence of this and so reported to Mr. Inglish; that he was told to find some evidence of law violation on the part of the Panama Refining Company before its suit came up in Tyler, for if he found this evidence, it would help the government in its suit, but that he was unable to find any such evidence. He further stated that during the time of his employment by the Department of the Interior, he asked Jimmie Inglish how long he thought the jobs as investigators for the Government would last and he stated only so long as they could find evidence of violations of the law.

The Plaintiffs introduced in evidence a statement by F. R. Stapp, who stated that he is manager of the loading [fol. 59] rack at Kilgore, Texas, known as the Texas Unity and has been for the past year; that on Saturday, November 4, 1933, Jimmie Inglish, an employe of the Bureau of Investigations of the Department of the Interior, came to him and asked him to make an affidavit to the effect that on September 23, 1933, A. F. Anding was running oil through a certain pipe line which is known as the Franklin Adams line which was connected with said loading rack; that he told Mr. Inglish that he could not make such affidavit, as he did not know that Mr. Anding or anybody else was running oil through said line and loading through said loading rack on said date; that, on the other hand, according to his knowledge of said loading rack,

there had been no oil run through said line; that about October 1st he broke the said line out of said loading rack and no oil was spilled on this occasion; that if any oil had been run through this line since Mr. Anding had put in his connections into the loading rack at least 10 or 15 barrels would have spilled out at the time of breaking out said connections; and that Jimmie Inglish then stated to him that as an agent of the Federal Government he then and there subpoenaed him to appear before A. D. Ryan at 815 Citizens National Bank Building, Tyler, Texas, at 8:30 o'clock A. M., Monday, November 6, 1933.

The Plaintiffs introduced in evidence a statement by W. I. Jones, who stated that for the last year he has been employed by the Panama Refining Company of Kilgore, Texas; that on or about September 5, 1933, he was Refinery Yard Foreman for the Panama Refining Company; that as a part of his duties, he installed a pipe line from the refinery to the north end of the loading rack used by the Panama Refining Company, which is a privately owned loading rack; that this pipe line was installed for the purpose of loading in tank cars from the refinery crude oil, fuel oil, or any other petroleum products; that immediately [fol. 60] after this line was installed, R. L. Knight, an Agent of the Department of the Interior, and another agent by the name of McClure, came to the place where said pipe line was connected with the loading rack and asked why the pipe line was installed; that he informed them that it was installed for the purpose of loading crude oil, fuel oil, and other by-products that might be shipped from time to time by the Panama Refining Company over the railroad; that Mr. Knight informed him that the pipe line would have to be disconnected since the Federal Government would not permit the same; that he asked Mr. Knight what objections the Federal Government had to the pipe line and Mr. Knight stated that he had decided that it was installed for the purpose of running "'hot" oil; that he advised him that he was mistaken that it was installed for the purpose of loading crude oil, fuel oil, gasoline, kerosene, or any other products that the Panama Refining Company might desire to ship when it was shipped direct from the refinery, as the line was connected with the discharged pumps located at the refinery used for load-

ing out commodities from the refinery and that said line was installed for that purpose only; that Mr. Knight replied that it didn't make any difference for what purpose the line was installed; that it could not be used; that Mr. Knight then and there stated that if he attempted to use the line that he would take him to jail immediately. He further stated that Mr. Knight was armed with two large six-shooters at the time and stated that he would have an agent of the Department of the Interior placed on each end of the loading rack day and night for the purpose of preventing the use of said line by the Panama Refining Company, and if it was ever used against his orders that he would lodge him in jail immediately; that said pipe line was, in truth and in fact, installed only for the purpose as above stated, and was not installed for the purpose of transporting what is known as "hot" oil and that the Panama Re- [fol. 61] fining Company has refrained from using said line for any purpose since the date of said threats so made by Mr. R. L. Knight, and until its case against A. D. Ryan can be determined by the Federal Court, for the reason that the officers of the Panama Refining Company believe that if they should use it without the protection of an order from said Court, the said Knight will carry out his threats as aforesaid.

The Plaintiffs introduced in evidence a statement by P. B. Goodwin, who stated that he is President of the Upshur Refining Company and has been so employed since its incorporation in Texas in March, 1932, or thereabout; that during the period of his employment with said corporation, it has been engaged in the manufacture or refining of crude oil products from crude oil in the East Texas Field; that he is acquainted with the operations of the Lake Refining Company, Inc., Carnation Refineries, Inc., Locke Refining Company, Goodson Refining Company and the Lotus Refinery and of his own knowledge knows that they are engaged in the business of refining or manufacturing of crude oil into its by-products; that the crude oil they purchase comes from within the State of Texas; and that all refining and manufacturing they do is done within the State of Texas. He further stated that about the 3rd of September, 1933, J. G. Floyd, in company with Glen Briscoe, called at the office of the Upshur Refining

Company in Gladewater, Texas, and Mr. Joe Hemphill was also with them; that they represented that they were agents of the Department of the Interior, Bureau of Investigations, but did not exhibit any credentials; that on that day they presented him with forms of reports and stated that they wanted them filled out daily, in accordance with the orders of the Department of the Interior; that after they showed him how to fill them out, they then wanted to guage the crude oil tanks which he permitted them to do, after they had stated that the same was in [fol. 62] accordance with the orders of the Department of the Interior; that since that date, he has caused said reports to be properly filled out daily and delivered to some agent of the Department of the Interior in an attempt to comply with all of the orders of the Department of the Interior; that among the agents that called at the Upshur Refining Company's plant at various times were Messrs. Floyd, Dupree, Briscoe, Hemphill, Parker, Guinn, Flanagan and Martin; that after several calls of the various agents, he consulted his attorney seeking his advice about what was the proper thing to do against what he thought was an unreasonable and improper invasion of their property rights; that his attorney advised him to comply with all demands and requirements as promulgated by any of the various Federal Departments and officials until such time as the Federal Court could finally adjudicate the matter upon a proper petition filed therein. He further stated that after the preliminary hearing held before Judge Randolph Bryant in October, 1933, in Tyler, Texas, his attorney advised him to continue to comply with all of the demands and requirements, but that he felt that in view of the testimony that it was not necessary to comply with the requests made by the various officials; that accordingly he instructed all of the employes to comply with all of the demands and requirements of all of the agents and to ask each and every one whether or not the information sought was by demand, requirement, or request; and that since that time the Upshur Refining Company has operated its business upon that basis. He further stated that about the 5th day of October, 1933, Mr. J. G. Floyd called at the office of the Upshur Refining Company and asked for a copy of a check and the stub showing payment to the Refinery Products Company for oil purchased about the

28th day of September; that Mr. Floyd was referred to Mr. Deavenport and asked for the information above stated to which Mr. Deavenport replied and informed [fol. 63] Mr. Floyd that it was the intention of the Upshur Refining Company to comply with each and every demand and requirement of the Federal Government and its agencies and wanted to know whether or not the information sought was a demand or requirement or just a request, and that if he, Mr. Floyd, would give him a letter to that effect the information sought would be furnished; that Mr. Floyd first stated that he would give him a letter to that effect but apparently changed his mind and stated that he would get a letter from Mr. A. D. Ryan; that on the 7th day of October, 1933, Mr. Floyd returned to the office and handed Mr. Deavenport a letter, said letter being in substance as follows:

"United States Department of the Interior, Office of the Secretary, Washington

Gladewater, Texas,
Oct. 6, 1933.

Mr. Jim Davenport, Upshure Refinery.

DEAR MR. DAVENPORT: Would appreciate it if you would let Mr J. G. Floyd of the Division secure a copy of check and stub showing payment to Refinery Products Co. for oil purchased about the 28th of Sept.

Very truly yours, A. D. Ryan, Spec. Agent in Charge."

that upon presentation to the latter of the letter, Mr. Deavenport informed Mr. Floyd that it was not the kind of a letter he asked him to get but that if he would sign a receipt on the back of that letter of the information required as per the letter addressed on the reverse side and that the same was as per the demand of Mr. A. D. Ryan, he would then furnish the information, to all of which Mr. Floyd agreed, signing the receipt therefor in substance as follows:

[fol. 64] "This will acknowledge receipt of the information required as per letter addressed to you on the reverse side of this letter as per the demand of Mr. A. D. Ryan.

(Signed) J. G. Floyd, Dept. Interior."

that upon the signing of the receipt, the check was delivered to Mr. Floyd for his approval and inspection; and that the check in controversy showed the payment to the Refineries Products Company, Inc., by the Upshur Refining Company covering crude oil purchased from them. He further stated that on the 31st day of October, 1933, Mr. Joe Dupree, in company with Mr. William E. Guinn, called at the office of the Upshur Refining Company and made an outright demand to gauge the crude oil tanks of the Upshur Refining Company; that they were informed that if it was not a request, that if it was a demand and a requirement to do so, they would be allowed to gauge such tanks, to which they replied that they had instructions to gauge those tanks, that they were going to gauge the tanks, and that they were demanding the right to do it; that they were permitted to gauge the tanks at that time in compliance with that demand; and that on the 3rd day of November, 1933, Mr. Glen Briscoe, in company with another man, came upon the property of the Upshur Refining Company, proceeded to gauge the tanks and informed the Gauger, Mr. C. F. Lindsey, that he did not need any permission to gauge the tanks and proceeded to gauge them without the consent of any person whatsoever connected with the Upshur Refining Company.

The Plaintiffs introduced in evidence a statement by Edward Rose, who stated that he is the owner of the Canyon Refining Company near Kilgore, Gregg County, Texas; that upon numerous occasions during the months of September and October, 1933, J. W. Smith and Mr. Pontius, [fol. 65] who stated that they were employed by the Bureau of Investigations, Department of the Interior, under the supervision of A. D. Ryan of Tyler, Texas, as well as other agents of the Department of the Interior, came upon his refining property by force and without his consent and over his protest and gauged his tanks; and that this was done on numerous occasions after he had filed suit in the Federal Court at Tyler against Mr. Ryan.

The Plaintiffs introduced in evidence a statement by R. B. Knight, who stated that he is President of the Carnation Refining Company, a corporation, and held that position on the 5th day of September, 1933; that on the 5th day of September, 1933, J. G. Floyd, in company with

another party, whose name he does not remember, called at his office at Gladewater, Texas, and represented that they were in the employment of the Department of the Interior of the United States Government as Special Investigators, but did not show any credentials; that they presented him with printed forms and stated that these forms were to be filled out daily in detail, an affidavit made thereto and were to be ready each and every day until further notice; that they demanded that these forms be made out the first day of September, 1933, and continued thereafter. He further stated that at the same time Floyd said and demanded that they had the right to gauge the tanks of the Carnation Refining Company; that Floyd did not gauge the tanks himself but later on that same day two other men whom he did not know gauged the tanks and questioned the operator at length; that he later learned that one of these men was Dupree, who is an Agent of the Department of the Interior; that he did not oppose the gauging of the tanks at this time for fear that he would get in trouble; and that later, after consulting his attorney, he refused them permission to gauge the tanks, as well [fol. 66] as refused to make the reports demanded. He further stated that this procedure was followed by various other persons claiming to be agents of the Department of the Interior, among whom were men by the name of Flanagan, Quinn, Hemphill, and Briscoe; that there were others whose names he does not know; that they repeatedly called at his office and asked for these reports and also asked to gauge the tanks and also went on the Carnation Refining Company's property and tried to trace out their pipe lines and stopped their employes from their work and asked them many questions concerning where he purchased oil and where it came from all of this being done without consent; that on or about October 23rd and 24, 1933, Briscoe and Parker demanded the reports and demanded the right to gauge the tanks; that at this time, Briscoe asked him many questions with reference to whether or not he purchased the oil from a certain specified lease; that he also asked him to give him the total amount of crude oil he had run for the months of September and October, 1933; at this time, Mr. Tom Patton, who is Vice-President of the Carnation Refining Company, was present

and he, Mr. Knight, asked Mr. Briscoe if he had specific instructions to demand this information and he stated that he had and that it was in his line of duty to do so; that on or about the 2nd day of November, before 9 o'clock A. M. six different men at least made three different gauges of his tanks and after the gauges were made on that date and about 10 o'clock A. M., he was served with a warrant of arrest by Deputy United States Marshal Stanley, who granted the privilege of going to Tyler later that day to appear before United States Commissioner Paul Kern, who set his bond at $1000.00, which he made and he was thereupon released; that he has never at any time knowingly and intentionally violated any valid law of the United States or of Texas; and that this is the first time [fol. 67] that he has ever been arrested or charged with any offense in violation of any law.

The Plaintiffs introduced in evidence a statement by Ed Kendrick, who stated that he is Superintendent of the Lake Refining Company; that one night during the early part of September, 1933, he was asleep at his home when Mr. Soape, an employe of said Company, and Mr. Dupree woke him up; that Mr. Dupree informed him very distinctly that he was going to gauge the tanks, stating that he was in the employment of the Federal Government; that he asked Mr. Dupree to wait until he dressed, in order to go gauge the tanks with him; that Mr. Dupree informed him that it wasn't necessary for him to dress since he would go any way whether he was with him or not; that he informed Mr. Dupree that he had a night watchman and he had his orders and, no doubt would carry them out, so then Dupree waited until he dressed; that they both together gauged the crude tanks; that Mr. Dupree informed him that he was sorry about the way Mr. Soape had acted and no doubt would cause him, Mr. Soape, some trouble and that Mr. Dupree was very antagonistic all the way through.

The Plaintiffs introduced in evidence a statement by R. P. Soape, who stated that he is employed by the Lake Refining Company of Gladewater, Texas; that one night during the early part of September, Mr. Joe Dupree came onto the property of the Lake Refining Company and said that he wanted to gauge the tanks holding crude oil, at the same time telling him that he was employed by the Depart-

[fol. 68] ment of the Interior; that he asked Mr. Dupree if he had permission to gauge the tanks from the office and he said that he did not; that he told Mr. Dupree that he would first have to get permission from the office; that Mr. Dupree said that he did not have to get permission from anyone, and then pulled out a little book and asked him to put his name on it, which he did not do; that he, Mr. Soape, did offer to get Mr. Kendrick and if he said it was OK he would then permit Mr. Dupree to gauge the tanks; that Mr. Dupree insisted that he not wake up Mr. Kendrick, who was then asleep; since he was going to gauge the tanks anyway; that he, Mr. Soape, however, woke up Mr. Kendrick and left Mr. Dupree talking to Mr. Kendrick; that before leaving them, however, he heard Mr. Dupree tell Mr. Kendrick there was no use for him to put on his clothes to go with him to gauge the tanks; and that was the last he saw of them until Mr. Kendrick and Mr. Dupree passed him on their way to gauge the tanks, so he thought.

The Plaintiffs introduced in evidence a statement by John Kraker, who stated that he is Secretary, Treasurer and Manager of the Lake Refining Company. He further stated facts which substantially agree with those stated by Mr. R. B. Knight summarized above.

The Plaintiffs introduced in evidence a statement by N. S. Locke, who stated that he is President of the Locke Refining Company and further stated facts which substantially agree with those stated by Mr. R. B. Knight summarized above.

[fol. 69] The Plaintiffs introduced in evidence a statement by J. P. McGee, who stated that he is operating the Goodson Refining Company in Upshur County; that about Monday, October 30, 1933, Mr. Parker, in company with another man, both of whom represented that they were with the Department of the Interior in the Division of Investigations, visited him in his office and asked the right to gauge his tanks; that he stated to them that he had rather they would not gauge the tanks; that Mr. Parker stated that they were going to gauge them anyway and they proceeded to do so; that on or about Wednesday, November 2, 1933, Mr. Martin, who represented that he was in the employment of the Department of the Interior, in the Division of

Investigations, asked for the reports; that he asked whether the reports were essential; that Mr. Martin demanded them for the Department of the Interior; that Mr. Martin came back to his office on the following Friday and wanted the reports; that he refused to make them; that they have gauged his tanks every night since; that they do not ask permission and permission has never been given for them to invade his property and gauge his tanks; that Mr. Martin further asked who owned the plant and said: "I know that a little refinery cannot operate and pay the posted price."; that they gauged the tanks on November 4, 1933, and failed to ask permission from anybody and went on the property anyway; that he told Mr. Martin that he heard Mr. Ryan say on the witness stand in Tyler that unless permission was given they would not gauge the tanks or take reports, at least that is what he understood Mr. Ryan to say, to which Mr. Martin said there and then that "New rules had been made and we now demand the reports."; and that if there have ever been any new rules and regulations he has never been informed as to who made them nor when they were made.

[fol. 70] The Plaintiffs introduced in evidence a statement by E. J. Ekstrom, who stated that he has been, since July 15, 1933, employed as Office Manager of the Southport Petroleum Company at its refinery near Kilgore, Texas; that practically continuously since about September 1, 1933, he and other officers and employes of the Southport Petroleum Company have been harrassed, molested and browbeaten in the course of their employment by various men, who represented themselves as agents of the Department of the Interior, and in particular by R. L. Knight, J. H. McClure, H. W. Pontius, G. H. Flagg and one Matthews and one Inglish; that these agents have many times come to the office of the Southport Petroleum Company and demanded of him and other officers and employes of said Company whether they were going to make certain reports demanded by said agents and when they were told the reports would not be made, they would start away and then immediately return and make such statements as: "You are not going to change your mind, are you?" and "You know you are not going to make these reports?"; and that these agents came in the office of the Southport Petroleum Company at all hours of the day without permission and

against the protests of the officers and employes of the Southport Petroleum Company and through their presence would prevent the officers and agents of the said Company from carrying on the business of the Company, and prevent them from making private business transactions for the Company. He further stated that about September 22, 1933, these agents commanded one W. B. McDuff, gateman for the Southport Petroleum Company, to place his hand on the gate of the fence around the refinery as if he was barring their entrance into the refinery and allow his picture to be taken in such position; that these agents very frequently encountered various employes of the Company, [fol. 71] such as night watchmen and tank gaugers, and questioned them about the Company's business, inquiring as to the amount of oil the refinery was handling, where it was coming from and where it was going to, causing such employes to lose time from their work and thus hampering the business of the Company, that frequently these agents will follow employes of the Company when leaving the plant or when returning to the plant; that they frequently enter the Company's premises, go on the Company's tanks and gauge them over the protest of the officers and employes of the Company and some times will return and gauge the tanks several times in one day, thus constantly interfering with the business routine of the Company and the morale of the employes; that on several occasions certain men would come on the Company's premises at night in a Plymouth sedan and sneak in the plant but when discovered by the employes of the Company, they would immediately drive off; that said Plymouth sedan is one used by the Department of the Interior and is driven by one Matthews, a Department of the Interior Agent; that he himself has recognized automobiles following him when he leaves the plant, or is otherwise off the Company's premises, as automobiles used by the Department of the Interior.

Plaintiffs then offered a certified copy of a criminal complaint filed against E. J. Ekstrom in the Tyler Division of the Eastern District of Texas charging before United States Commissioner for the said District and Division of Texas that the said E. J. Ekstrom in violation of Section 9 (c) of the Act of June 16, 1933, of the United States did unlaw-[fol. 72] fully refuse to furnish representatives of the Government information and reports necessary to successfully

administer said Act of June 16, 1933. Criminal complaint is signed by "J. H. Leech, Special Agent," and sworn to before United States Commissioner. Further, the warrant of arrest carried a request of the Commissioner to issue warrant for the arrest of the within named E. J. Ekstrom and is signed by J. Howard Marshall, Jr., Special Assistant to the Attorney General.

Plaintiffs then offered in evidence a copy of the Code of Fair Competition for the Petroleum Industry.

Defendant's Case

The defendants introduced in evidence a statement by EDWARD B. SWANSON, who stated that he is Chief Economist of the Petroleum Economics Division, Bureau of Mines in the City of Washington, District of Columbia; that he has held this present position for five years (including the period in which he served as Acting Chief prior to final appointment); that in connection with his duties he has had supervision of the collection of statistics of production and refining of petroleum within the several states of the United States; and that for two years prior thereto he served as Assistant Chief of the Division. He further stated that the following is a true statement of the production, refining, consumption, etc., of petroleum and the refined products thereof, in the State of Texas and the exports and shipments to other states of petroleum and refined products thereof from the State of Texas:

[fol. 73]

Supply and Demand of Petroleum and Products Thereof in Texas in 1932

(Figures in Barrels)

Supply within Texas:		
Production of crude oil	312,478,000	
Production of Natural Gasoline	8,836,000	
Imports of crude oil [1]	945,000	
Receipts of crude oil from other states [1]	23,353,000	
Decrease in stocks of crude oil and refined products	15,137,000	
Total supply from Texas		360,749,000

Demand within Texas:			
Gasoline		17,883,000	
Lubricants (3% of above)		536,000	
Gas, Oil and Fuel Oils (1931) [2]:			
Railroads	17,144,000 [3]		
Steamships	12,483,000 [4]		
Other	16,518,000 [5]		
		46,145,000	
Other refined products		23,564,000 [6]	
Crude as such plus losses		1,221,000	
Refining Losses		5,233,000	
Total Demand within Texas			94,582,000
Shipped from Texas:			
Exports			
Crude	7,680,000		
Refined products	21,684,000		
		29,364,000	
[fol. 74]			
Deliveries to other states:			
Crude	143,170,000		
Refined products	93,633,000		
		236,803,000	
Total shipped from Texas			266,167,000
Total demand for Texas Oils			360,749,000

Summary

Oil used within Texas	94,582,000 barrels, or	26 per cent
Oil shipped out of Texas	266,167,000 barrels, or	74 per cent
Total	360,749,000 barrels, or	100 per cent

[1] Imports and receipts from other states of refined products are negligible.

[2] No figures for gas, oil and fuel oil consumption in Texas for 1932 are available, but the 1932 figures will closely approximate the 1931 figures.

[3] Total deliveries to railroads, some portion of which, possible 20% (3,428,000 barrels) is actually used outside of State.

[4] Delivered at Texas ports for bunker fuel—all consumed outside of Texas.

[5] Of this amount 14,284,000 barrels are consumed in the production and refining of petroleum.

[6] Some minor refined products such as kerosene, asphalt, etc., included in this figure, leave Texas, possibly as much as 15% of the total, which would amount to 3,535,000 barrels.

To arrive at a fair figure for the percentage of Texas oil which is consumed outside of Texas as against the total consumption of Texas oil by consumers other than the oil industry the following deductions from the figures for de-
[fol. 75] mand within Texas are reasonable and proper:

Oil delivered to ships at Texas ports for bunker fuel	12,483,000
Oil consumed by the oil industry in production and refining of petroleum	14,284,000
Refinery losses	5,233,000
Total deduction	32,000,000

The fuel oil delivered to railroads within Texas and consumed outside of Texas (footnote 3 above) and the kerosene, asphalt, etc., which leave Texas (footnote 5 above) which together total almost 7,000,000 barrels are not deducted above because of uncertainty as to exact quantity.

With this modification of the foregoing tabulation "Supply and Demand of Petroleum and Products thereof in 1932" the following summary is true:

Oil used within Texas by consumers other than the oil industry	62,582,000	barrels or 18 per cent
Texas oil used outside of Texas	278,650,000	barrels or 82 per cent
Total	341,232,000	barrels or 100 per cent

The monthly statistics of the Bureau of Mines assembled for the first eight months of 1933 do not indicate that any material change has occurred during the present year in the percentages of oil used within Texas and Texas oil used outside of Texas.

[fol. 76] He further stated that the foregoing are official figures of the United States Bureau of Mines and that the above computations are accurate to the best of his knowledge and belief.

The Defendants introduced in evidence statements by:

Ralph H. Kinsloe, Vice-President & Gen. Mgr., Magnolia Pet. Co., Dallas, Tex.,

R. L. Wheelock, Receiver for Central Texas Refining Co., Corsicana, Texas,

H. S. Lane, Crown Central Petroleum Corporation, Houston, Texas,

H. C. Wiess, Chairman Regional Refining Company, Houston, Texas,

C. R. Starnes, President, Texas Oil Products Company,

J. D. Wrather, President, Overton Refining Company,

L. B. Haberle, Manager and Vice-President of Chief Refining Company,

M. Taxman, Secretary-Treasurer, Taxman Refining Company,

H. W. Bass, Secretary H. W. Bass Drilling Company,

Roy B. Jones, President, Panhandle Refining Company,

D. G. Gray, Manager, Waggoner Refining Company, Inc.,

John Hancock, Vice-President Texas & Pacific Coal & Oil Company,

Jno. G. Pugh, Assistant Manager, Southwest Division, Sun Oil Company,

[fol. 77] each of whom stated that he has been familiar with conditions in the oil business in the State of Texas for many years and especially with respect to the purchase of crude oil for refinery operations and the sale of refined products; that a large part of the oil produced in Texas is transported out of the State; that while a large amount of crude oil is refined in Texas, only a small per cent is consumed in the State, a large part, probably 85%, of the refined products being shipped out of the State for sale and consumption. Each further stated that as long as production of crude oil is reasonably in balance with consumers' demand, conditions tend to be stable and competition normal; that whenever production has been in excess of such demand, distress prices have followed with oil selling far below reasonable cost of production; that a similar reaction takes place with respect to refined products; that the effect is not merely local, as the price cutting spreads and disturbs markets through the entire nation; that there has been a great deal of oil, known as "hot" oil, produced in excess of the allowables fixed by the Railroad Commission; that usually it does not get to market in open channels, but is secretly produced and sold almost invariably at prices below the prevailing market price; that a part of this "hot" oil has been purchased by small refineries and especially those located near the field where the "hot" oil is produced; that these conditions have been notorious in East Texas; that the refineries which purchase the "hot" oil under the market price sometimes sell part of it, making shipments outside of the state; and that much of it is refined in Texas by the purchasing refineries and the refined products reach the consumer market in and outside the state at prices far below those which would exist if prevailing prices had been paid for the crude. Each further stated that competition of this character, which is believed [fol. 78] to be unfair, almost invariably affects prices over

a wide area; that those refineries which have not purchased "hot" oil must, if they meet competition, cut their prices to those of the "hot" oil refineries with the result that distress prices become general, both as to crude and as to refined products and the entire national market is demoralized, great losses occur to the royalty owner and the law abiding refiner and producer; and that beyond any question such sales of "hot" oil and the refined products even if confined to the State of Texas materially affect and burden interstate commerce in oil and products and prevent a normal flow of commerce in such commodities.

Each further stated that it is impossible by looking at a barrel of oil or its refined products to tell whether the oil was legally produced; that it is extremely difficult to check all producers over a twenty-four hour period; that this difficulty is greater in East Texas where refineries own production or are hooked up directly to producing wells; that vast pipe line systems, both gathering and trunk lines, together with other methods of transportation, are so numerous and intricate that it is extremely difficult to trace the source of oil or determine whether the movement is intrastate or interstate; that a simple, reasonable and effective way to check production and trace the movement of oil and products is to ascertain the amounts received or purchased by refineries, the name of the seller or person delivering and the subsequent disposition of the oil or its products; that forms have been provided for this purpose which can readily be filled in and the work causes no undue inconvenience or burden and that many refiners gladly give the information desired.

Each further stated that in his opinion large quantities of "hot" oil and products at distress prices have moved in interstate, as well as intrastate, commerce; that this move-
[fol. 79] ment destroys normal markets and prices, materially affects the normal flow of such commodities between states, and causes unfair and destructive competition; that, to detect such "hot" oil or its products, or both, it is necessary to require reports from refineries and the use of other means, such as inspection, to check the accuracy of such reports; and that it is no undue burden to subject refineries to inspection and to require them to make reports in compliance with the Rules and Regulations already issued.

The Defendants introduced in evidence a statement by EDWARD T. MOORE, who stated that he is President of Simms Oil Company, a Texas corporation, with principal offices in Dallas; that one of the main Capital Assets of this Company consists of a complete refinery located in West Dallas; that this refinery has a maximum crude throughput capacity of 4,000 barrels daily and was operated continuously from the date of its acquisition in June, 1925, until January 20, 1933; that it represents a Capital Investment of more than $1,250,000.00, and was generally conceded to be one of the most efficient plants in North Texas; that when operated on North Texas crude, it is capable of producing 66.38% of gasoline, 4% kerosene, and 26.22% fuel, which indicates an unusually high degree of efficiency when compared with the yields of approximately 36% to 38% gasoline obtained from North Texas crude by the use of the ordinary skimming processes; and that through an exchange arrangement, Simms Oil Company has been able to obtain, delivered at its West Dallas plant, North Texas crude for East Texas crude on a barrel for barrel basis, plus transportation charges to the refinery.

[fol. 80] He further stated that in the year 1932, the throughput of this plant amounted to more than one million barrels of crude oil; that the results of operation for that year, after taking into consideration the depreciation of the plant, the overhead and selling expense, the operation and maintenance expense, the transportation of oil and the cost of the crude, based upon the established posted prices thereof, resulted in an aggregate loss of $350,000.00, or approximately 35¢ per barrel, after making allowance for the amount realized for the refined products produced; that these disastrous results occurred in spite of the fact that operating expenses were pared to a minimum, a 25% reduction being accomplished by the end of the year from the costs experienced at the opening of that period; that the losses from operation at the end of the year were so great it became necessary on January 20, 1933, to discontinue further operation of the West Dallas plant; and that this discontinuance necessitated the laying off of some sixty-odd refinery employees, and has caused a $1,250,000.00 investment to remain idle.

He further stated that during January and each subsequent month of 1933, they have carefully weighed the relative costs of crude, transportation, refinery operation,

depreciation, overhead and sales, comparing these costs with the possible realization from the sale of refined products as represented by the prevailing market prices for gasoline and fuel oil, and that in not one single month of the first ten months of 1933 would it have been possible to operate this West Dallas refinery upon a break-even basis.

He further stated that this state of affairs is attributed to the conditions existing in East Texas; that a large number of refiners in that field have been able to produce gasoline, by inefficient methods and with materially lower [fol. 81] yields, and to sell the same at prices far below his costs; that he knows the degree of efficiency of the East Texas refineries is less than his and he can only assume that they are able to produce this gasoline by reason of some advantage they have through their ability to secure their crude oil requirements at prices below the prevailing posted prices thereof, and that in his opinion many of these refineries are operated on "hot oil", and where "hot oil" is used in the operation of a refinery, gasoline taxes are being evaded.

He further stated facts which agree in substance with those stated by Mr. Kinsloe and others summarized above.

The Defendants introduced in evidence a statement by J. R. Pearson, who stated that he has been an independent oil producer for the past twenty years, with properties in the State of Texas and properties in the East Texas Field for the past 2½ years; that he has been active in a personal way in assisting the Railroad Commission and the Military forces in an endeavor to see that the proration laws were obeyed; that the reason for this activity is that he and his partners own oil properties in the East Texas Field which with stabilization and orderly production are worth over $1,000,000.00, but that with stabilization such as has existed for the past two years, he would lose these properties, leaving him in debt over $300,000.00. He further stated that he had abided by the proration laws although others have become rich by breaking them; that he believes the proration program to be proper and right; that during the [fol. 82] period of his operation in the Field, he has had close contact with all classes of operation, including production, refining, pipe lines and trucking; that practically

all the refiners in the Field have their own pipe lines or gathering systems and many also own their own wells; that these refineries do not use seals or lock stops on tank batteries located on the leases, with the result that the lock stops can be opened at any time, allowing oil to flow to the refinery at the same time the well is producing into the same tanks; that he is familiar with the small pipe line systems connecting these refineries in the East Texas Field; that these lines are so interconnected that oil can be delivered from practically any point in the Field to these refineries and can be delivered from one refinery to another; that royalty owners whose leases are connected to these refineries have no way of knowing how much oil is produced; that he personally owns an interest in two leases operated by the East Texas Refinery; that in the months of January, February, March and April, 1933, they sent him checks with statements attached for the proper allowable and in the same envelope each month was another check without the statement for 8 to 10 times the amount of the allowable check; that he returned these checks and requested a statement of the oil run, which it took several months to obtain; that on checking these figures on the oil run, it was discovered that the greater part of this oil, which was reported for January, February, March and April, 1933, was really run in June, July, August, September and December of 1932, when the posted price for oil was higher; that the refineries paid others 40¢ a barrel at the same time they paid him 25¢ a barrel for oil from the same lease; that daily reports from the refinery would have prevented this overproduction; that because of the intricate system of pipe line connections between wells and refineries [fol. 83] and between refineries, it is absolutely impossible to know the amount of oil the refineries handle or whence it comes, unless reports are required; that reports from refineries are necessary to supplement reports from pipe lines and producers; that many refineries in the East Texas Field are making these reports and that he believes the reason others refuse to make the reports is because it will disclose the amount of hot oil which they are handling.

The Defendants introduced in evidence statements by

A. L. Cone, Employe, Taylor Refining Company, Tyler, Texas,

P. G. Lake, Operator, Hunt Production Company, Tyler, Texas,

H. L. Hunt, Operator, Hunt Production Company, Tyler, Texas,

Roy Lee, Employe, Hunt Production Company, Tyler, Texas,

Mac Kennedy, General Manager, Taylor Refining Company, Tyler, Texas,

each of whom stated that he is connected with the Production and Refining Company mentioned in connection with their names above; and that as a part of his duties, he has prepared monthly reports under Regulations IV and V of the Department of the Interior pertaining to the production and refining of crude oil. That the time required for compiling these reports has been nominal (Mr. Cone estimated 7½ minutes); that, based upon his experience in the [fol. 84] preparation of the reports the data required is necessary in connection with the successful operation of refineries and production; and that he does not consider the reports and the data called for under said regulations as being burdensome or working a hardship upon him.

The Defendants introduced in evidence a statement by Paul Bramlette, who stated that he has resided in East Texas for a number of years, and is interested in oil properties in what is known as the East Texas Oil Field; that prior to July 15, 1933, the date on which Secretary Ickes issued Regulations under the National Industrial Recovery Act, a chaotic condition existed in this field, that the Proration Laws of the State of Texas were utterly disregarded and excess oil in the sum of hundreds of thousands of barrels monthly entered the stream of interstate commerce; that since July 15, 1933, however, there has been a marked improvement in the field and excess oil has not been produced in appreciable amounts, and that the reports required under the Regulations of the Department of the Interior have not worked a hardship upon anyone and, in his opinion, the reports required under the Regulations are reasonable and are the best and most satisfactory means of enforcing Section 9(c) of the National Industrial Recovery Act.

The Defendants introduced in evidence statements by R. W. Fair, President, McMurrey & Fair, Inc.; J. W.

McCulloch, G. C. Finch, B. A. Wight, L. N. Crim, A. O. [fol. 85] Godfrey, Robert E. Nolen, W. R. Nicholson, E. M. Bramlette, S. W. Ross, M. H. Bivins, P. A. Wylie, Fred S. Markham, L. W. Turner, John R. Alford, H. A. Pace, F. L. Sartain, A. R. Sharp, W. W. Wiss, R. A. Harman, Ben Laird, John T. Crim, Joe Cross, A. S. Jurvis, Maxie Wilson, S. S. Cook, R. W. Fair, President, Fair & Thompson, Inc., George I. McKee, J. A. Knowles, J. E. Bagwell, J. S. Elder, W. D. Northcutt, Jr., J. K. Wadley, R. T. Forman, L. S. Sartain, J. Malcom Crim, Roy H. Laird, R. L. Bauman, J. W. Barton, Vice-President, Longview Investment Company; Clark Dickson, J. F. Stuckey, Frank Elder, J. M. Dickson, C. G. Strong, N. B. Bean, Harold Vance, Douglas Godfrey, E. G. Green, W. B. Smith, J. T. Jeter, W. H. York, H. Hunter, J. C. Hunter, Carl B. Everett, John Droppleman, Rade Kangerga, E. C. Laster, Walter R. Smith, Mrs. Lon Emma Coolidge, J. A. Birdwell, L. A. Grelling, Jr., O. M. Boren, L. W. Lowe, G. Clint Wood, B. J. Peasley, W. E. Wylie, J. M. Shaw, H. M. Hale, E. W. Reagan, M. F. Thompson, R. S. Shaw, J. H. Spivey, A. P. Cary, J. E. Glover, W. C. Windsor, Bryan W. Payne, C. L. [fol. 86] Thompson, W. P. Moore, E. Fred Herschbach, Arcadia Refining Company; A. G. Morton, J. Solon King, T. A. Johnston, E. S. Holt, M. Kangerga, M. W. McVey, F. C. Condon, H. P. Leverette, H. A. Baker,

each of whom stated facts which agree in substance with the statement by Paul Bramlette summarized above.

The Defendants introduced in evidence statements by C. A. Loftis, Secretary of the Omega Oil Company; A. D. Bush, Secretary of the Miller-Lacy Oil Company and the Nicholson-Terrell Oil Corporation, each of whom stated that for a period of some seventeen months or more he has been engaged in the operation of oil properties in the East Texas Oil Field and has seen this field under the administration of the Railroad Commission of Texas and has also observed conditions in the field during the period when it was under martial law; that during this time there was utter disregard for the Proration Laws of the State by many operators and producers; that he had been compelled to stand helplessly by while oil from a common pool, part of which was his, was produced by these violators without

regard for any property rights that he had; that many operators and producers who followed this custom of producing oil in violation of proration laws reaped enormous profits; that this disregard for law on the part of those violating it caused him untold loss, as it took from him [fol. 87] that part of the common pool to which, under the law of possession, ownership and property, was his; and that hundreds of thousands of barrels of excess oil entered interstate commerce. He further stated that, being familiar with the field, he knows there has been a great change in conditions since July 15, 1933, the date the President prohibited illegally produced oil from entering the stream of interstate commerce; that the Regulations issued by the Secretary of the Interior requiring producers and refiners and others to submit reports has not been a burden or worked a hardship upon any legitimate operator in the field; and that the preparation of such reports requires a very small amount of time.

The Defendants introduced in evidence statements by Harry Turner, royalty owner; Edwin Lacy, royalty owner; C. L. Taylor, Fee owner; J. K. Wadley, Lease owner; R. F. Northcutt, royalty owner; Isadore Maritzke, royalty owner; Tom Richardson, lease owner; M. M. Turner, royalty owner; James R. Curtis, lease owner; F. C. Persons, royalty owner; G. C. Finch, Fee owner; George [fol. 88] W. Rhodes, royalty owner; M. H. Bivins, Secretary-Treasurer, Skipper-Bivins Oil Company,

who stated facts which in substance agree with the statement of C. A. Loftis summarized above.

The Defendants introduced in evidence statements by M. C. Sells, J. H. Brogan, T. W. Lee, Barney Carter, C. J. Thompson, W. P. Keeling, Bert Ashton, S. S. Laird,

each of whom stated that he is engaged in the operation of oil properties in the East Texas Oil Field; that prior to July 11th, the date of the President's Executive Order prohibiting the shipment of illegally produced oil in interstate commerce, hundreds of thousands of barrels of oil were

taken from the common pool to the untold injury of thousands of royalty owners in Texas and neighboring states; and that he believes that the most satisfactory means of enforcing the above mentioned Executive Order is to require monthly reports from producers, refiners, railroads and pipe lines.

The Defendants introduced in evidence a statement by J. D. WRATHER, who stated that he had been engaged in the refining business in the East Texas Oil Field for many months; that the reports required by the Regulations issued by the Secretary of the Interior have not worked any hardship upon him as a refiner, and have required very little time for preparation; and that he believes the Regu- [fol. 89] lations reasonable and the best and most satisfactory way of enforcing Section 9(c) of the National Industrial Recovery Act.

The Defendants introduced in evidence a statement by H. M. PRIDDY, who stated that for the past two and one-half years he has spent the greater part of his time in the East Texas Oil Field with headquarters at Tyler, Texas; that prior to July 15, 1933, the date the Department of the Interior issued regulations under the National Industrial Recovery Act, very bad conditions existed in the field; that a great deal of excess oil was being produced, much of it going out of the field without any record being made which would protect the royalty owners; that oil thieves and "hot oil artists" did about as they pleased; that the Proration Laws of the State were disregarded and openly violated and he believes over 250,000 barrels of excess oil daily entered interstate commerce; that since the Department of the Interior sent its men into the field, this condition has been largely eliminated and, comparatively, a small amount of excess oil is now escaping; and that all of that of which he has any knowledge is being moved under so called tenders or by those who claim they are cleaning the tanks or treating bad oil. He further stated that he has heard of now law-abiding, reputable producer objecting to filling

out the form required by the Department of the Interior and does not believe that these forms or Regulations work any hardship on any law-abiding citizens.

The Defendants introduced in evidence a statement by Gus F. Taylor, who stated that he is President of the Citizens National Bank of Tyler, Texas, and has been for many [fol. 90] years closely associated with the developments that have taken place in East Texas; that in the early months of 1933 hundreds of thousands of barrels of delinquently produced oil, oil produced in utter disregard for state regulation, were run from the field; that since July 15th, this condition has been remedied so that the amount of excess oil now leaving the field is, in fact, negligible; that in his opinion the Regulations issued July 15th and 25th, 1933, are the best and most satisfactory means of enforcing Section 9(c) of the National Industrial Recovery Act and that he believes that Federal regulation has placed the oil industry on a stable foundation to the benefit of millions of people.

The Defendants introduced in evidence statements by M. C. Parrish, Jr., J. G. Floyd, J. N. Inglish, H. E. Tyson, R. L. Knight, and Joseph L. Quinn,

each of whom, with the exception of Joseph L. Quinn, stated that he is an Oil Enforcement Agent of the Division of Investigations, Department of the Interior; that prior to entering the employ of said Department of the Interior, he had been employed for a considerable period of time by the Railroad Commission of Texas in connection with enforcement of the proration orders of said Railroad Commission; (Joseph L. Quinn stated that he is an Oil Enforcement Agent of the said Department of the Interior and for the past 13 years prior to entering said service he had been employed by large independent oil companies and is familiar with the conditions confronting the producers, refiners and marketers in the East Texas Field); that there are [fol. 91] some 11,200 producing oil wells in the East Texas Field and that it would be almost a physical impossibility to check actual production at the well; that such check would necessitate a force of some 25,000 men; that because of the vast system of pipe lines and interconnected and

interwoven gathering systems in the East Texas Field and the close proximity of producing wells to refineries, it is impossible to check wells to determine to which refinery the produced oil is delivered; that it is impossible by looking at a barrel of oil or its refined products to determine whether it was illegally produced; that it is extremely difficult to check all production over a 24 hour period, and this difficulty is greater in East Texas where refineries own production or are hooked up directly to producing wells; that vast pipe line systems, both gathering and trunk lines, together with other methods of transportation, are so numerous and intricate that it is extremely difficult to trace the source of oil or determine whether the movement is interstate or intrastate; that a simple, reasonable, and effective way to check production and trace the movement of oil and its products is to ascertain the amounts received or purchased by refineries, the name of the sellers or persons delivering and the subsequent disposition of oil or its products; that forms have been provided for this purpose which can readily be sent in and the work causes no inconvenience or burden; and that many refineries gladly give the information desired.

In addition to the above facts, M. C. Parrish, Jr., also stated that hundreds of thousands of barrels of illegally produced oil left the East Texas Field and entered interstate commerce; and that in his opinion the smaller refineries situated in the East Texas Field are the main out-[fol. 92] let for this illegally produced oil. He further stated that he has made investigations of the following named plaintiffs herein in connection with their refining and shipments of crude oil and the products thereof in commerce and has compiled the following data which he believes to be true and correct:

Panama Refinery, Kilgore, Texas

	July, 1933.
Fuel Oil	23
Gasoline	15
Gas Oil	6
Topped Crude	10
Distillate	7
	61 Cars.

August, 1933.

Gasoline	11
Gas Oil	12
Top Crude	6
Fuel Oil	13
Distillate	8
Kerosene	1
	51 Cars.

The Panama Refinery loaded their refined products on the Texas Unity Rack and that the A & P Rack is owned by Anding and Potter, the owners and operators of the Panama Refinery. Attention is called to that part of this report covering shipments of crude oil made by various and sundry shippers from the A & P Rack during the months of July and August, 1933. Inquiries have been as to the identity of the shippers of this crude and they are not known in Kilgore, Texas.

[fol. 93] Report of Refined Products Shipments of Panama Refinery, Kilgore, Texas.

(From records of I. & G. N. Office, Kilgore, Texas.)

July 3, 1933					
GATX	14905	8115	Fuel Oil	Ed Bateman	Jewett, Texas.
STCX	8538	8052	"	Do	
PTX	4706	8078	Gasoline	Liberty Oil Co.	Dallas, Texas.
July 5, 1933					
LDLX	2043	10050	Fuel Oil	Ed Bateman	Jewett, Texas.
PTX	4651	8081	Gasoline	Goyer Co.	Greenville, Miss.
"	5510	8088	"	Nat'l O. & G. Co.	Jackson, Miss.
"	4579	8044	Gas Oil	Cooper Keller	Locust Ridge, La.
July 8, 1933					
QTX	271	8090	Topped Crude	Atlantic Pacific & Gulf.	Wichita Falls, Tex.
GATX	20145	8073	"	Do	
"	23455	8088	"	Do	
PTX	4004	8056	Gasoline	City of Dallas, Texas.	
July 9, 1933					
PTX	4602	8050	Gasoline	Kentucky Consumers Oil Co.	Nashville, Tenn.

[fol. 94] Report of Refin

ied Products Shipments of Panama Refinery, Kilgore, Texas.

(From records of I. & G. N. Office, Kilgore, Texas.)

July 11, 1933					
GATX	72688	820			
PTX	5907	101	04	Topped Crude	Atlantic Pacific & Gulf Refg.	Wichita Falls, Tex.
LDLX	772	100	39	"	Do	
NOTM	6093	105	31	"	Do	
STCX	1175	100	00	"	Do	
July 12, 1933			97	"	Do	
CHIX	10105	101				
GATX	16399	100	97	Fuel Oil	H. K. Stahl Co.	Clarion Ia.
July 15, 1933			46	Topper Crude	Atl. & Pac. & Gulf Ref.	Wichita Falls, Tex.
STCX	9199	80				
PTX	5639	101	57	Topped Crude	Atl. & Pac. & Gulf Ref.	Wichita Falls, Tex.
July 17, 1933			09	Fuel Oil	Ed Bateman	Jewett, Texas.
GATX	27499	100				
PTX	4542	80	69	Fuel Oil	Ed Bateman	Jewett, Texas.
			44	Fuel Distillate	Nat'l O. & G. Co.	Eagle Pass, Texas.

[fol. 95]

PTX	1545	824			
PTX	4603	804	47 Gasoline	Liberty Oil Co.	Dallas, Texas.
July 21, 1933			42 "	Natl. O. & G. Co	Greenville, Ohio.
TIDX	1032	999			
ASIX	835	1019	96 Fuel Oil	Ed Bateman	Jewett, Texas.
GATX	13434	807	92 "	Do	
STCX	9327	801	79 "	Do	
July 23, 1933			19 "	Do	
NOTM	6169	1007			
"	6107	1050	70 Fuel Oil	I. & G. N. Ry.	Palestine, Texas.
I.&G.N.	10766	809	00 "	Do	
July 19, 1933			00 "	Do	
DWOX	53	808			
PTX	4844	806	30 Fuel Oil	Nat'l. O. & G. Co.	Wiergate, Texas.
July 22, 1933			33 Gasoline	Liberty Oil Co.	Dallas, Texas.
PTX	4850	806			
July 28, 1933			30 Gas Oil	Cooper Keller	Livingston, Texas.
PTX	1848	820			
			04 Distillate	Cooper Keller	Calvert, Texas.

[fol. 96] Report of Refined Products and Crude Shipped by Panama Refining Co., Kilgore, Texas.

July 18, 1933					
PTX	4621	8050	Gas Oil	Cooper Keller	Ittabana, Miss.
7-19-33					
PTX	4561	8044	Fuel Dist.	Wisconsin Mot. Corp.	Milwaukee, Wis.
7-20-33					
PTX	3226	8261	" "	Natl. O. & G. Co.	Burlington, Ia.
"	4521	8061	Gasoline	Bradford Oil Co.	Kansas City, Mo.
7-22-23-33					
PTX	4042	8052	Gasoline	Primrose Pet. Co.	Anchorage, La.
"	4668	8078	Gas Oil	"	Little Rock, Ark.
"	4555	8084	Fuel Dist.	"	"
"	4407	8069	"	"	"
"	4651	8081	Gasoline	"	"
"	3273	8256	Fuel Oil	Snider Co.	Connorsville, Ind.
"	4002	8050	Gasoline	Chevrolet Mot.	Atlanta, Ga.
"	4699	8083	Gasoline	Highland O. Co.	Little Rock, Ark.
CYCX	499	8164	"	"	"
PTX	2711	8078	"	"	"
IMRX	1184	8086	Fuel Oil	Kelly Williamson Co.	Rockford, Ill.
PTX	4604	8052	Fuel Dist.	W. T. Raleigh	Freeport, Ill.
ASX	629	10100	Fuel Oil	Orenda Corp.	Wilmington, Ill.
CYCX	1059	10148	"	Wrought Washer Co.	Milwaukee, Wis.

[fol. 97]

7-24-33					
GATX	75539	10170	Fuel Oil	Wrought Washer Co.	Milwaukee, Wis.
7-25-33					
SHPX	11471	10217	Fuel Oil	Ed Bateman	Jewett, Texas.
PTX	4830	8063	Distillate	Cooper Keller O. Co.	Prestiss, Miss.
"	6087	8093	Gas Oil	"	Foley, Ala.
7-26-33					
PTX	1444	10560	Fuel Oil	Ed Bateman	Jewett, Texas.
7-30-33					
GATX	72783	8199	Fuel Oil	Rep. Creosoting Co.	Indianapolis, Ind.
NATX	7896	8088	Gas Oil	Tex Utility Co.	Kirbyville, Tex.

Report of Refined Products Shipments from Panama Refining Co., Kilgore, Texas.

August 11, 1933					
CYCX	8813	8199	Gasoline	Nat'l O. & G. Co.	El Campo, Texas.
PTX	3039	8263	"	Panama Refg.	Dallas, Texas.
"	4221	8057	Gas Oil	Nat'l O. & G. Co.	Tulot, Ark.
"	4315	8097	"	"	Iyronza, Ark.
"	1424	10957	"	Neb. L. & Power	McCook, Neb.
PTX	1052	10661	Top Crude	Phoenix Refg.	Houston, Texas.

[fol. 98] Report of Refined Products Shipments from Panama Refining Co., Kilgore, Texas.

8–12–33					
CYCX	2040	10134	Top Crude	Eastern States Pet.	Galveston, Texas.
LDLX	1338	8001	"	Phoenix Refg.	Houston, Texas.
GATX	26020	8035	"	"	"
PTX	5442	10119	"	"	"
"	5638	10100	"	"	"
"	3992	8052	Gasoline	Panama Refg.	Dallas, Texas.
GATX	29593	8106	Gas Oil	Cooper Keller	Hawkin, Ill.
8–14–33 (Probable error—See above)					
SATX	29593	8106	Gas Oil	Cooper Keller	Hawkinsville, Ia.
8–15–33					
GATX	29378	8016	Gas Oil	Cooper Keller	Leland, Miss.
"	29662	8105	"	Town of Plains	Plains, Ga.
8–22–33					
PTX	6087	8093	Gas Oil	Central Ill. Pub. Serv.	Hoopston, Ill.
GATX	27926	10188	Fuel Oil	Interstate Drop Forge	Milwaukee, Wis.
QTX	9343	8084	"	Wrought Washer Co.	" "
GATX	25768	8097	Gas Oil	Ft. Madison Gas & L. Co.	Ft. Madison, Iowa.
8–23–33					
STCX	8036	8259	Fuel Oil	Nat'l O. & G. Co.	Wiergate, Texas.

[fol. 99]

PTX	4407	8069	Gas Oil	Cooper Keller	Columbus, Miss.
"	4572	8042	Gasoline	G. C. Peterson	Lyons, Miss.
ASIX	562	10097	Fuel Oil	Eastern States Pet.	Galveston, Tex.
8–24–33					
DWOX	105	8082	Fuel Oil	Wrought Washer Co.	Milwaukee, Wis.
GATX	25716	8100	Distillate	Cooper Keller Co.	Memphis, Tenn.
PTX	4651	8081	"	Kelly Williamson	Rockford, Ill.
"	4084	8056	Gasoline	G. C. Peterson	Anderson, Ill.
"	4844	8063	"	Panama Refg.	Dallas, Texas.
8–25–33					
PTX	4830	8063	Distillate	Eastern States Pet.	Houston, Texas.
"	4760	8060	"	Primrose Pet.	Little Rock, Ark.
HMTX	1020	8144	Fuel Oil	Ed Bateman	Jewett, Texas.
8–28–33					
PTX	4542	8044	Distillate	Eastern States Pet.	Houston, Texas.
"	4621	8050	"	"	Galveston, "
"	6507	10105	Fuel Oil	"	"
"	660	10252	"	"	"
ASIX	735	10203	"	"	"
PTX	4604	8052	Gasoline	Cooper Keller	Minneapolis, Minn.

[fol. 100] Report of Refined Products Shipments from Panama Refining Co., Kilgore, Texas.

8-29-33					
ASIX	691	10200	Fuel Oil	Eastern States Pet.	Galveston, Tex.
PTX	6121	8088	Gas Oil	Nat'l O. & G. Co.	Holly Spgs., Miss.
ASIX	180	8136	Kerosene	Altitude Pet. Co.	McFarland, Kan.
8-30-33					
PTX	4628	8052	Gas Oil	Primrose Refg.	Little Rock, Ark.
PTX	4584	8047	Distillate	Siniane Bros.	Colby, Wis.
GATX	27730	10074	Fuel Oil	Ed Bateman	Jewett, Texas.
PTX	4561	8044	Gasoline	Imperial Pet. Co.	Dupo, Ill.
GATX	5562	8004	Distillate	Eastern States Pet.	Houston, Texas.
Aug. 31, 1933.					
QTX	271	8090	Fuel Oil	Eastern States Pet.	Galveston, Tex.
GATX	23532	8087	Gasoline	Liberty Oil Co.	Dallas, Texas.
"	23684	8073	"	G. C. Patterson Co.	Dupo, Ill.
Added:					
August 26, 1933.					
PTX	4683	8083	Gasoline	Allied Oil Jobbers	Minneapolis, Minn.
GATX	23695	8078	Fuel Oil	Nat'l O. & G. Co.	Wiergate, Tex.

Southport Refinery, Kilgore, Texas.

July, 1933

Tops of Crude		49 Cars.
[fol. 101]	August, 1933	
Top Crude		49 Cars.
Refined Oil		1
Distillate		91
Crude Tops		31
		172 "

Report of Refined Products Shipments of Southport Refinery, Kilgore, Texas.

Aug. 1, 1933					
STCX	1514	10065	Top Crude	Cooper Keller	Winnipeg, Canada.
QTX	278	8219	"	do	
GATX	3174	8216	"	do	
QTX	8198	8184	"	do	
LDLX	1740	8035	"	Cooper Keller	Moose Jaw, Canada.
STCX	2271	10072	"	do	
August, 4, 1933					
GATX	27574	10100	"	Cooper Keller	Winnipeg, Can.

In addition to the above, from July 20, 1933, to August 31, 1933, inclusive, there were approximately 246 cars of Crude Tops, Distillate, and Tops of Crude, shipped under the name of the Southport Pet. Co. to Houston, Laredo, and Eagle Ford, Texas.

[fol. 102]

Canyon Refinery, Kilgore, Texas

July, 1933

Fuel Distillate	10
Gasoline	8
Topped Crude	7
Gas Oil	1
Kerosene	1
Fuel Oil	2
	29 Cars

August, 1933

Top Crude	17
Fuel Oil	15
Gasoline	20
Gas Oil	8
Kerosene	3
Distillate	4
	67 Cars.

[fol. 103]

Crude Oil and Reduced Crude Shipped by Canyon Refinery, Kilgore, Texas, from Gladewater, Texas, During July and August, 1933

Crude Oil	July, 1933	32 Cars.
Reduced Crude	August, 1933	5 Cars.

Crude Oil Shipped from Overton, Texas, by Canyon Refg. Co.

Crude Oil	July, 1933	20 Cars.

Report of Shipments of Refined Products of Canyon Refinery, Kilgore, Texas
(From Records of I. & G. N. Freight Records, Kilgore)

July, 1, 1933					
ASIX	620	10110	Fuel Distillate	Memphis Refg. Co.	Memphis, Tenn.
July 2, 1933					
GATX	72640	8226	"	do	
ASIX	1595	8106	Distillate	do	

July 5, 1933					
SHPX	8547	8016	Fuel Distillate	Memphis Refg.	Memphis, Tenn.
ASIX	1600	8116	"	do	
LDLX	1147	8059	"	do	
ASIX	259	8000	"	do	
SHPX	8076	7999	"	do	
July 11, 1933					
CYCX	8720	8203	Gasoline	Apex Oil Co.	St. Louis, Mo.
PTX	4039	8011	"	do	
July 12, 1933					
CYCX	7527	8153	Distillate	Petroleum Prod., Inc.	Kansas City.
QTX	9104	7878	Top Crude	Deepwater Refgs.	Houston, Texas.
STCX	4030	7924	"	do	
GATX	20200	7899	"	do	
"	26020	7831	"	do	
July 13, 1933					
DWCX	72	8087	Top Crude	do	
July 15, 1933					
ASIX	707	9856	Top Crude	do	
SHPX	8042	8024	Gasoline	Apex Oil Co.	St. Louis, Mo.
"	8025	8144	"	do	
"	8693	7952	"	Primrose Pet. Co.	Memphis, Tenn.

[fol. 105]

Report of Refined Products and Crude from Canyon Refinery, Kilgore, Texas

6—135

7-18-32					
GATX	23127	Gasoline	7974	Nat'l O. & G. Co.	Clarksdale, Miss.
CYCX	118	"	7997	Primrose Pet. Co.	Little Rock, Ark.
7-20-33					
PTX	2160	Gas Oil	8093	W. R. Taylor Co.	Barth, Fla.
SHPX	8371	Fuel Dist.	8051	Natl. O. & G. Co.	Rochester, Minn.
7-22-33					
GAGX	13548	Kerosene	8075	L. O. Carter Co.	St. Louis, Mo.
7-28-33					
GATX	13256	Crude Tops	8097	Memphis Refg. Co.	Memphis, Tenn.
7-30-33					
GATX	27926	Fuel Oil	9988	Ed Bateman	Jewett, Texas.
TIDX	1003	"	9829	Oreda Corp.	Willington, Ill.
7-31-33					
SEAX	341	Gaso-	8076	Tank Cars Gas Inc.	Minneapolis, Minn.
8-1-33					
GATX	20661	Top Crude	8083	Memphis Refg.	Memphis, Tenn.
ASIX	533	"	10092	"	"

[fol. 106] Report of Refined Products and Crude from Canyon Refinery, Kilgore, Texas

8-3-33					
GATX	11019	" "	8225	Memphis Pet.	Memphis, Tenn.
PTX	4233	Fuel	8049	Town of Harley	Harley, Iowa.
8-4-33					
LDLX	246	Fuel Oil	7960	E. D. Bateman	Jewett, Texas.
8-5&6-33					
Over-PTX	2282	Gaso	8741	Geo. C. Peterson	Detroit, Mich.
ton PTX	3368	"	8256	Modern Refg.	Dupo, Ill.
" PTX	4650	"	8081	"	"
" CYCX	8681	"	8169	Tri City Ry Co.	Davenport, Ia.
" GATX	14445	Fuel Oil	8081	Orenda Corp.	Wilmington, Ill.
" "	828	"	8142	Interstate Corp.	Milwaukee, Wis.
" STCX	8039	"	8097	Nat'l O. & G. Co.	Hayward, Texas.
" GATX	13283	"	8183	"	"
8-7-33					
ASIX	854	Top Crude	10191	Davis & Co.	Houston, Texas.
GATX	25276	"	8154	"	"
"	72682	"	8228	"	"
GATX	23071	Gas Oil	8087	Nat'l O. & G. Co.	Tilot, Ark.
PTX	1147	Gasoline	8255	Auto Stations	Detroit, Mich.
8-9-33					
SHPX	8608?	Gasoline	8127?	G. C. Peterson	Fairdale, Ill.

[fol. 107]

STCX	9806	Fuel Oil	8068	Ed Bateman	Jewett, Texas.
8–10–33					
GATX	13162	Gas Oil	8082	Three Star O. Co.	Chicago, Ill.
PTX	1848	Gas Oil	8204	LaCrosse O. Co.	LaCrosse, Wis.
STCX	70800	"	8212	Primrose Pet. Co.	Little Rock, Ark.
"	9077	"	8260	North States P. Co.	LaCrosse, Wis.
SHPX	8714	Kerosene	8086	Eastern States Pet.	Houston, Texas.
CYCX	9872	Gasoline	8171	Primrose Pet.	Little Rock, Ark.
8–11–33					
GATX	23684	Gasoline	8073	Primrose Pet.	Little Rock, Ark.
8–12–33					
GATX	14495	Top Crude	8081	Eastern States Pet.	Galveston, Tex.
"	25541	"	8053	"	"
QTX	9893	"	8039	"	"
GATX	70215	"	8104	"	"
PTX	3502	"	8252	"	"
8–16–33					
CYCX	7849	Gasoline	8034	Nat'l O. & G. Co.	Indianapolis, Ind.
PTX	4555	Gas Oil	7937	"	Columbia, Miss.
8–15–33					
PTX	4668	Gasoline	8078	Tank Car Gas.	Minnesota, Minn.
GATX	14828	Kerosene	8075	Altitude Pet.	Cashen, Ind.

[fol. 108] Report of Refined Products and Crude from Canyon Refinery, Kilgore, Texas

8-16-33					
CHIX	10117	Fuel Oil	10180	Orenda Corp.	Wilmington, Ill.
ASIX	440	Gasoline	8187	Geo. Peterson	Watertown, Wis.
"	1689	"	8099	Cooper Keller	Minneapolis, Minn.
GATX	3375	Fuel Oil	8088	Ed Bateman	Jewett, Texas.
HMTX	1048	"	8210	"	"
8-17-33					
ASIX	1350	Gasoline	8188	Cooper Keller	Chariton, Iowa.
GATX	60016	Kerosene	5055	Taswell Sen.	So. Pekin, Ill.
"	25552	Gas Oil	8048	Nat'l O. & G. Co.	Mattson, Miss.
8-24-33					
ASIX	434	Gasoline	8135	Cooper Keller	Chariton, Iowa.
8-25-33					
SHPX	8714	Gasoline	8086	Cooper Keller	Minneapolis, Minn.
8-26-33					
GATX	23162	Gasoline	8082	Primrose Refg.	Anchorage, La.
8-28-33					
CYCX	8621	Distillate	8178	Eastern States Pet.	Houston, Texas.
NATX	1302	"	10056	"	"
PTX	4602	Gasoline	8050	G. C. Peterson	Dupo, Ill.
CYCX	8604	"	8175	Cooper Keller	Minneapolis, Minn.

[fol. 109]

"	8813	"	8199	Primrose Pet.	Anchorage, La.
GATX	25845	Fuel Oil	8016	Phoenix Refg.	Houston, Texas.
QTX	404	"	8039	"	"
PTX	2621	"	8258	"	"
QTX	9141	"	8050	Eastern States Pet.	Galveston, Texas.
PTX	3370	"	8245	"	"
8-29-33					
PTX	4042	Gas Oil	8052	Skelly Oil Co.	Des Moines, Ia.
8-31-33					
QTX	9425	Distillate	8153	Primrose Pet.	N. Little Rock, Ark
8-30-33					
SHPX	8847	Distillate	8028	U. S. Coast Guard Base	Pascagoula, Miss.
SWIX	681	Gasoline	8120	G. C. Peterson	Dupo, Ill.
Aug. 1, 1933					
SHPX	11352	Crude Tops	10068	Memphis Refg.	Memphis, Tenn.

Report of Crude Oil Shipped from Canyon Refinery, Kilgore, Texas (Overton, Texas)

July 1, 1933					
GATX	23407	Crude Oil	8087	T. T. Oil Co.	N. Y. City.

[fol. 110]

Shipments of Crude Oil from Canyon Refinery, Kilgore, Texas. (Gladewater, Texas.)

July 5, 1933					
SHPX	11624	Crude Oil	10214	W. E. Winship	Morrelo, La.
"	11543	"	10210	do	
"	11187	"	10294	"	
"	11481	"	10068	"	
"	11478	"	10070	"	
"	11278	"	10074	"	
July 4, 1933					
SHPX	11509	Crude Oil	11200	W. E. Winship	Morrelo, La.
"	10798	"	10231	do	
"	11113	"	10284	"	
"	11661	"	10208	"	
July 3, 1933					
SHPX	10258	"	10144	"	
"	11606	"	10217	"	
"	10135	"	10090	"	
"	11450	"	10081	"	
HMTX	7016	"	10054	"	
QTX	1809	"	10167	"	
"	1683	"	10163	"	
STCX	1374	"	10068	"	

[fol. 111]

SHPX	10127	"	10127	"
"	1980	"	10103	"
"	11134	"	10285	"
GATX	72589	"	8210	"
"	27630	"	10070	"
"	14923	"	8107	"
QTX	1804	"	10178	"
GATX	75527	"	10118	"
"	13583	"	8085	"

Locke Refinery, Gladewater, Texas

July

Gasoline	53	Cars
Gas Oil	17	"
Distillate	1	"
Crude Oil	33	"
	111	"

Locke Refinery, Gladewater, Texas—continued

[fol. 112]

August

Gasoline	50 Cars
Gas Oil	16 "
Distillate	12 "
Cracking Stock	1 "
	79 "

Crude Oil Loaded at Overton, Texas, Under Name of Locke Drilling Company, Inc.

July, 1933

Crude Oil 264 Cars.

Locke Refining Company, Gladewater, Texas

(Gas Oil)

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack.
7-1	Goad Bros.	Hamburg, Ia.	CTAX	8095	8069	Locke	
	Acme Pet. Co.	Walnut, Ia.	GATX	26227	8075	"	Trinity
7-5	Geo. O. Peterson	Dupo, Ill.	GATX	5330	8093	"	"
7-6	Acme Pet. Co.	Kansas City, Mo.	SHPX	8616	8104	"	"
7-7	Pet. Products Inc.	Perry, Ia.	PTX	3749	8060	"	"

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7-8	Carbon Coal Co.	Highland Park, Iowa.	APTX	107	8092	Locke	Trinity
7-10	Swanson-Anderson,	Oakland, Neb.	CYCX	310	8091	"	"
"	Ressmeyer Oil Co.	Pipestone, Minn.	PTX	3399	8246	"	"#1
7-11	Union Gas Co.	Bloomington, Ill.	QTX	8004	8051	"	"#1
			GATX	18253	10036	"	"#1
"	Quality Oil Co.	Butler, Wis.	CYCX	8539	8097	"	"#1
			CTAX	8126	8171	"	
7-12	Modern Refinery,	Dupo, Ill.	CTAX	6989	8095	"	
"	Quality Oil Co.	Butler, Wis.	QTX	8217	8068	"	"
			SHPX	8681	8079	"	"
7-15	Allis Chalmers Mfg. Co.	West Allis, Wis.	PTX	4747	8083	"	"
"	Union Gas & Elec. Company.	Bloomingdale, Ill.	SHPX	10146	10097	"	
"	Quality Oil Co.	Butler, Wis.	CTAX	7008	8102	"	"
7-16	Porter Oil Co.	Venango, Neb.	APTX	101	8094	"	"
7-17	L. A. Black	Burk's Switch, Arkansas.	CTAX	8054	8069	"	Team
"	City of Perry.	Perry, Ia.	SHPX	8911	7988	"	Trinity

[fol. 114]

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack.
8-9	Stevenson Coal Co.	Nebraska City, Neb.	CTAX	8053	8064	"	
			SIMX	9947	8148	"	
"	Cooper Keller Oil Company.	Flandreau, S. D.	CYCX	8961	8171	"	
"	Black Hawk Oil Corporation	Chicago, Ill.	GATX	15541	8105	"	
8-14	Modern Refg. Corp.	Dupo, Ill.	CYCX	963	8094	"	"
"	Merchant & Strahn,	Wayne, Neb.	QTX	8117	8095	"	
8-15	Modern Refinery	E. St. Louis, Mo.	SHPX	8305	8108	"	"
8-16	Clark Oil Co.	Manitowoc, Wis.	GATX	5962	10069	"	
8-17	Malleable Iron Ranger Co.	Beaver Dam, Wis.	QTX	8387	8087	"	"
8-18	Northland Oil Co.	Moorehead, Minn.	SHPX	8627	8092	"	"
8-21	Ft. Madison Gas Light Company.	Ft. Madison, Ia.	GATX	16920	10114	"	"
8-21	Central Illinois Public Service Co.	Hoopeston, Ill.	GATX	2866	8096	"	"
8-26	City of Albany	Albany, Mo.	GATX	5363	8084	"	"
8-28	City of Franklin	Franklin, Neb.	GATX	23901	8095	"	"

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8-30	Wisconsin Public Service Corp.	Green Bay, Wis.	PTX	4311	8061	"	"
"	Municipal Light Plant.	Indianola, Ia.	SHPX	8890	8083	"	"
		Distillate					
7-3	Frank Stevens Co.	Eagle Lake, Tex.	CTAX	8132	8173	"	"#1
8-18	Bell Oil & Gas Co.	St. Paul, Minn.	GATX	25573	8050	"	"
8-21	" " "	" " "	GATX	13354	8080	"	"
8-22	" " "	" " "	APTX	113	8095	"	"
8-23	H. S. England	Pawnee City, Neb.	GATX	5689	8131	"	"
8-26	Forrest City Mill and Electric Co.	Forrest City, Mo.	CYCX	8703	8191	"	"
"	Community Oil Co.	Villisca, Ia.	GATX	26541	8094	"	"
8-28	Petroleum Products Co.	Omaha, Neb.	GATX	2786	8170	"	"
			CYCX	8719	8205	"	"
8-28	Acme Pet. Co.	K. C., Mo.	PTX	2378	8257	Locke	Trinity
"	Petroleum Products						

[fol. 116] Distillate--continued

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack.
	Co.	Omaha, Neb.	GATX	29531	8104	"	"
8-29	Western Pet. Co.	Omaha, Neb.	GATX	5505	8084	"	"
8-30	Acme Pet. Co.	K. C. Mo.	CTAX	8095	8069	"	"
		Cracking Stock					
8-29	Metropolitan Utilities Gas Plant.	Omaha, Neb.	PTX	8074	8093	"	"
		(Gasoline)					
7-1	Acme Pet. Co.	K. C., Mo.	GATX	25667	8097	"	
			GATX	6805	8082	"	
"	Bethany Oil Co.	Bethany, Mo.	PTX	1967	8259	"	Trinity
7-3	W. H. Barber & Co.	Starbuck, Minn.	SHPX	9128	8137	"	
"	"	Milnar, N. D.	GATX	15111	8704	"	
"	"	Lidgewood, N. D.	GATX	22347	8122	"	"
7-4	"	Windmer, N. D.	GATX	29683	8102	"	"
"	"	Brandon, Minn.|	CTAX	8086	8067	"	"
"	"	Casselton, N. D.	GATX	29334	8104	"	"
7-6	Cooper Keller Oil Co.	Minneapolis, Minn.	GATX	5207	8096	"	"
"	Home Oil Co.	Mt. Vernon, Mo.	GATX	5201	8096	"	"

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7-7	Cooper Keller Oil Co.	Minneapolis, Minn.	GATX	6098	8125	"	"
	"	"	GATX	20540	8145	"	"
7-8	"	"	GATX	5687	8128	"	"
"	"	"	GATX	6348	8117	"	"
7-10	J. W. Norris & Son.	Grinnell, Ia.	GATX	5404	8086	"	"#1
"	Home Oil Co.	Ridgeway, Mo.	GATX	5689	8131	"	"#1
7-11	Transportation Oil Co.	Milwaukee, Wis.	GATX	6614	8088	"	"
"	Ozee and Hayes	Mattoon, Ill.	GATX	6031	8091	"	"
7-12	Ida Grove Oil Co.	Ida Grove, Ia.	CTAX	6899	8097	"	"#1
"	Muff Grain & Coal Company.	Liberty, Ind.	SIMX	9948	8159	"	"#1
"	O. A. Cooper Co.	Humboldt, Neb.	GATX	22333	8120	"	"
"	Farmers Corp. Oil Co.	Shelton, Ia.	APTX	109	8082	"	"
"	Harry See	Waterloo, Ia.	GATX	5299	8098	"	"
"	Acme Pet. Co. Notify Winterset Oil Co.	Winterset, Ia.	STCX	9155	8056	"	"
7-15	W. H. Barber & Co.	Minneapolis, Minn.	SIMX	9957	8152	"	"
"	Simmer Oil Co.	Ottumwa, Ia.	CTAX	8098	8067	"	"
7-16	M. St. L. Railway Co., Care Storekeeper Grisley.	Morning Sun, Ia.	SHPX	8740	8130	"	"
			CTAX	8108	8167	"	"

[fol. 118]

(Gasoline)—continued

7-17	Cooper-Keller Oil						
"	Locke Refinery, Io.	Minneapolis, Minn.	PTX	1647	8248	"	"
	Changed before m. ment to Cooper Ke- Oil Co.	K. C., Mo.	SHPX	8614	8138	"	"
"	Locke Refinery Keller Oil Co.	Minneapolis, Minn. K. C., Mo.	SHPX	8579	8080	"	"
7-17	Locke Refinery, I Changed to Coop. Keller Oil Co.	Minneapolis, Minn. K. C., Mo.	PTX	2343	8258	Locke	Trinity
"	Cooper Keller Oil	Minneapolis.	SHPX	8604	8153	"	
8-9	Big Heart Oil Co.	Minneapolis, Minn.	SHPX	9172	8149	"	
"	McCarthy Oil, Ca Viking Oil Co.	Kewanee, Ill.					
"	Emory Clark, Ca Rhode Duster Oil Company.	Milwaukee, Wis.	QTX	8983	8133	"	
		" "	CYCX	4118	8166	"	
			PTX	2202	8093	"	
8-11	West Central Gas	o. Louisburg, Minn.	PTX	1647	8248	"	Trinity

[fol. 119]

8-11	Beaver Dam Oil C	Beaver Dam, Wis.	PTX	2343	8258	"	
8-12	Johnson & Hill .,	Wisconsin Rapids, Wisconsin	GATX	29480	8106	"	"
"	McCarthy Oil Co						
	Care Viking Oil C		PTX	4539	8047	"	"
8-13	Central Pet. Co. .,	Milwaukee, Wis.	GATX	29483	8102	"	"
"	Home Oil Co.	Peru, Ind.	CYCX	9231	8170	"	
8-14	Geo. C. Peterson (	Ridgeway, Mo.	SIMX	1613	10217	"	"
	o.,	Dupo, Ill.	GATX	6509	8079	"	"
"	G "		GATX	29334	8104	"	
"	"	Ellsworth, Wis.	STCX	8006	8092	"	
8-16	West Central Gas	Casco, Wis.	GATX	6580	8088	"	"
8-17	Cooper Keller Oil Co. Company	Louisburg, Minn.					
		Minneapolis, Minn.	CTAX	7003	8101	"	"
			GATX	29396	8104	"	"
			SHPX	8580	8085	"	"
8-18	Sanes Pet. Co.	Kirksville, Mo.	GATX	2848	8094	"	"
			GATX	2852	8097	"	"
8-19	Peoples Oil Co.	Ft. Dodge, Ia.	STCX	8794	8094	"	"#1
"	Cooper Keller Oil Company,	Minneapolis, Minn.	GATX	29769	8121	"	"

[fol. 120] (Gasoline)—continued

[fol. 120]

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
8-19	Geo. O. Peterson and Company,	Dupo, Ill.	GATX	13998	8084	"	"#1
8-21	American Pet. Co.	Chicago, Ill.	GATX	5885	10065	"	"
			GATX	14605	8051	"	"
			GATX	5712	8125	"	"
"	Monarch Service Station,	Bay City, Mich.	GATX	5916	10069	"	"
8-22	Emory Clark Co. Care Rhode Deuster Oil Company,	Milwaukee, Wis.	SIMX	1605	10212	"	"
			PTX	4125	8064	"	"
8-24	Cooper Keller Oil Co.	Minneapolis, Minn.	GATX	29399	8108	"	"
			GATX	29496	8107	"	"
8-25	"	"	IMRX	1117	8086	"	"
			IMRX	1183	8083	"	"
8-26	Apex Oil Co.	Afton, Okla.	CYCX	8738	8202	Locke	Trinity
"	"	St. Louis, Mo.	SHPX	9157	8144	"	"
			SHPX	9151	8140	"	"
"	"	"	GATX	23972	8133	"	"

[fol. 121] (Gasoline)—continued

	Destination changed to Afton, Okla.						
8-26	Freeze Bros. Oil Co.	Waterloo, Ia.	GATX	25446	8064	"	"
8-28	Apex Oil Co.	Little Rock, Ark.	PTX	1863	8093	"	"
			CYCX	7901	8107	"	"
"	West Central Gas Co.	Louisburg, Minn.	CYCX	902	8055	"	"
"	Geo. C. Peterson Co.	Dupo, Ill.	GATX	11821	8137	"	"
			GATX	29582	8105	"	"
8-29	Globe and Refg. Company, Care National Pet. Co.	Central Park and Grand Ave., Chicago.	STCX	8684	8095	"	"
			GATX	29462	8108	"	"
8-30	Fulton Coal Co.	Chicago, Ill.	CYCX	8699	8168	"	"
"	Globe Oil & Ref. Co. Care National Pet. Co.	Englewood, Ill.	QTX	8722	8119	"	"
"	West Central Gas Co.	Louisburg, Minn.	GATX	29517	8107	"	"
8-31	Monarch Service Station	Saginaw, Mich.	GATX	6135	8085	"	"

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[fol. 122] In addition to the facts he stated above, J. G. Floyd, together with Joe Dupree, stated that during their employment with the Railroad Commission of Texas they became familiar with the more persistent violators of the State Proration Laws; that to their actual knowledge many local refineries in the East Texas Oil Field are tied directly to producing wells, either through by-passes or through illegal connection; that the following enumerated refineries, situated in the East Texas Oil Field, are tied directly to producing properties; and, that in order to check the producing properties, it is necessary also to check the refineries to determine the exact amount of oil being illegally produced above the allowable set by the regulatory body of the State.

Foshee Refinery

Connected to: Iron Rock Oil Co. Block 44. The allowable for this well for the two months was 3872.5 barrels.

A. B. Foshee, Block 36. Allowable was 3710.5 barrels.

Reynolds and Manziel, Block 30. Had a by-pass connection to this refinery and a pipe line connection to some other company. The allowable is not listed in the schedule at Gladewater.

Joe Manziel, Thompson Block 13 has a by pass connection to this refinery and a pipe line connection to some other company. The allowable was 3197.0 barrels.

Burnett & Foshee, Jim Bell lease had a pipe line connection and a by-pass connection to this refinery. The allowable was 2903 barrels.

Locke Refinery

Connected to: Rinehart pipe line system, (See note on this and other pipe lines.)

P. & G. Production Co., Sam Kay lease. This connection was a by-pass. This well was also connected to the 55,000 [fol. 123] barrel tank on Tenery farm. Also connected to Rinehart's system.

McCormick and Bates (Now United East & West) Sam Kay lease. This connection was a by-pass connection and had a different pipe line connection. Allowable was 4405.0 barrels.

Southern Oil & Refining Co. Pipe Line L. M. Harris, Demoss lease, by-pass. Allowable was 3876.5 barrels.

J. C. Harris, Block 17. By-pass connection. The allowable was 3621.5 barrels.

L. M. Harris, Victory lease, by-pass. The allowable was not listed.

55000 barrel tank on the Tenery farm.

C. Lyons Oil Co. (James N. Burns) Whittle lease. Pipe line connection. Allowable was 3739 barrels.

DeWitt and Travis, Bray lease. By-pass. Allowable was 1852 barrels, but not listed after August 7.

Carnation Refinery

Connected to: L. M. Harris, DeMoss lease. Allowable was 3876.5 barrels. The connection was a by-pass connection and pipe line connection.

J. C. Harris, Block 17. Same connections as above lease and the allowable was 3614 barrels.

L. M. Harris, Victory lease. Had a by-pass connection and also pipe line connection. Allowable is not listed.

T. A. Johnson, Block 35. Had a by-pass connection to this refinery. Was only connected three or four days before it was taken out. Caught July 17. The allowable at that time was 61.5 barrels per day.

DeWitt & Travis, Bray lease. Had a pipe line connection leading to this refinery. Also a by-pass connection for a [fol. 124] short time. The allowable was 1852.5 barrels up to August 7th, not listed since then.

Upshur Refinery

Connected to: P. B. Goodwin, Ida Johnson lease. Pipe Line connection. Allowable was 7980 barrels.

Jno. F. O'Connell, Richey lease. Pipe line connection. Allowable was 3853.5 barrels.

Receives quite a lot of truck oil.

Big Sandy Oil & Refining Co.

Lake Refinery

Connected to: Rinehart Pipe Line system. Sabine water system.

Marfinwood Oil Co., Nannie E. Walker lease. By-pass connection. Allowable was 3324 barrels.

Big Ten Oil Co., Block 10. This well was brought in and started to produce about August 10 and the allowable is not listed. Have tanks on the Refinery property.

Chas. Trigger, Wood lease. Pipe line connection and by-pass connection. Allowable 3765 (Up to Aug. 7).

Kimberlin and Reynolds, Perry Est. Block 11. Pipe line connection. Allowable 3215.5 barrels.

Connected to a pipe line owned by the Lake Refinery.

Explanation of the Rinehart Pipe Line System

The Rinehart Pipe Line System is a net-work of lines laid by A. J. Rinehart, and was supplying refineries with oil. Wells were flowed directly into the refineries or to the 55000 barrel tank on the Tenery Farm through this line. That 55000 barrel tank is now owned by the Tex-La Pipe Line Company, and it is connected with the 55000 barrel tank near the "Gladewater Fortress." The Southern Oil & Refining Co. has a pipe line connected to the tank close to the Fortress and the line leads to Kilgore and other [fol. 125] districts. The Southern Oil & Refining Company is also using the old Sabine water system as a gathering system and all the above lines and tanks are now connected together. The Rinehart system is also connected to the Longview Gathering System (Danciger) that leads to the Danciger Refinery at Longview.

Rinehart's pipe line is connected to the Locke Refinery, an- can go to the Carnation Refinery through the Locke Refinery Line. It winds through Gladewater to the Cook refinery, Trinity, Lake, Supreme, Godlin (Old H. & M.) and to Jacks Refinery.

Following is a list of wells which could flow directly to the complainants' refineries. These wells were found flowing as of the dates indicated and were flowing into lines whereby the oil could be switched to more than one refinery, as indicated.

April 23, 1933.—Rinehart Pipe Line System and could go to the Locke, Carnation, Lake, Cook, Trinity, and Gregg Refineries.

May 3, 1933.—J. F. O'Connell—Richey lease—By-pass to Lake or Trinity Refinery.

May 5, 1933.—P. & G. Production Co.—Kay lease—to Rinehart Pipe Line System and can go to Locke, Carnation, Cook, Lake, Trinity, Supreme, Gregg, and Godlin's Refineries.

May 11, 1933.—A. B. Foshee—Block 36 & 44—By-pass to the Foshee Refinery.

May 13, 1933.—Marfinwood Oil Co.—Walker lease—By-pass to the Rinehart Pipe Line System and could go to the Lake, Trinity, Supreme, Jacks, Godlins, Locke and Carnation Refineries.

May 22, 1933.—Burnett & Foshee, Bell lease—by-passing to the Foshee Refinery.

May 25, 1933.—Welch, Locke & Holloway, Whittle lease, by-pass to Locke Refinery.

May & June, 1933.—Dr. E. L. Walker, Walker lease—by-passing to the Lake, Trinity, Supreme, Godlin, or the Jacks Ref.

[fol. 126] May, 1933.—L. M. Harris, DeMoss lease—by-pass to Rinehart System, Locke, Carnation, Texas Oil Products, Lake, Trinity.

May, 1933.—Pelphrey Bros., Halley lease by-passing to the Carnation and Trinity.

June, 1933.—L. M. Harris, Victory lease, by-pass to Carnation, Locke Refineries.

July 17, 1933.—T. A. Johnson, Victory lease—bypass to Carnation Refg.

July 20, 1933.—Bobby Manziel, Block 30—by-pass to the Foshee Rfg.

The following is a list of wells and leases which were found flowing directly into refineries between the dates of May 1st and September 15, 1933. All over-production from these properties went directly to local refineries.

Date	Operator	Lease	Kind of violation	Destination of oil
May 4.	J. F. O'Connell	Richey	By-passing	Lake or Trinity
May 5.	Sam Roosth	Block 63	"	Lake or Trinity
May 7.	Sam Roosth	Block 63	"	Lake or Trinity
May 8.	J. F. O'Connell	Richey	"	Lake or Trinity
May 8.	Sam Roosth	Block 63	"	Lake or Trinity
May 11.	A. B. Foshee	Block 36	"	Foshee Refinery
May 12.	Marfinwood Oil Co.	Walker	"	Lake or Trinity
May 12.	A. B. Foshee	Block 36 & 44	"	Foshee Refinery
May 13.	Marfinwood	Walker	"	Lake or Trinity
May 17.	Burnett & Foshee	Bell	"	Foshee Refinery
May 19.	A. B. Foshee	Block 36 & 44	"	Foshee Refinery
May 19.	Marfinwood	Walker	"	Lake or Trinity
May 20.	Burnett and Foshee	Bell	"	Foshee Refinery
May 20.	Marfinwood	Walker	"	Lake or Trinity
May 22.	"	"	"	" " "
May 23.	Burnett and Foshee	Bell	"	Foshee Refinery
May 23.	A. B. Foshee	Block 44	"	Foshee Refinery
August 14.	A. B. Foshee	Block 36	"	Foshee Refinery

[fol. 127] In addition to the facts he stated above, J. N. Inglish also stated that in the course of the performance

of his official duties, he has secured information as to the available crude storage of the Panama and Southport Refineries, which is as follows:

Panama:

10,000
5,000
3,000
1,500
1,000
1,000—Last contained fuel oil, but could be for crude.
1,000—Last contained gas oil, but could be for crude.
1,000—Last contained Kerosene, but could be for crude.

23,500—Total at Refinery premises.

10,000—This tank located at Republic Christian lease.
10,000—This tank located at Republic Christian lease.

43,500—Total.

NOTE.—The two ten thousand barrel tanks are tied into the Tom Potter line leading to the Panama. There has just been installations made on a pump at Reed's Switch to move this oil.

Southport:

1,000
1,000
1,250
1,250
5,000

9,500—Total at Southport Refinery location.

Both of these refineries have lease storage on their production properties.

In addition to the facts he stated above, H. E. Tyson also stated that, based upon actual observation and from months of experience with the Railroad Commission of [fol. 128] Texas and in the Department of the Interior as an investigator in the East Texas Oil Field, it is a fact that the extent and character of pipe lines serving the East Texas field makes it an impossibility to check over-pro-

ducing properties from a check of the pipe lines. He further stated the following in support of the opinion:

(a) Gauging of pipe line storage facilities will not show the actual amount of oil being produced from a field where certain operators and producers are delivering a part or all of their oil to local refineries and loading racks.

(b) A producer may produce and run from a lease its daily allowable production to a pipe line where the oil or its equivalent could be checked, provided however, the said pipe line company keeps an adequate set of books or records, but, at the same time such producer may be using a by-pass connected to lines of a local refinery or loading rack and at the same time be delivering oil to such refinery or loading rack.

(c) The mere gauging of the storage facilities of pipe lines, refineries, treating plants and loading racks will not disclose the actual amount of oil produced from a given lease where such pipe lines, refineries, treating plants and loading racks are receiving oil from various leases and sources at the same time.

(d) Gauging of pipe line storage facilities will not show the actual amount of oil produced from day to day by producers.

(e) A producer may deliver the allowable oil production from a lease to a pipe line, and at the same time be delivering to a large storage tank located at some other point, the oil to be placed on the market at a latter date.

(f) Due to the large number of pipe lines and so-called [fol. 129] gathering systems in the East Texas Oil Field, it is impossible to tell what the producer is producing because the many gathering systems can deliver the oil into various trunk lines, loading racks, and to refineries. The oil can go through so many channels that it loses its identity and positively cannot be traced back to its origin.

The Defendants introduced in evidence a statement by Walter S. Behrens, who stated that he has been employed by the Department of the Interior of the United States as an Oil Investigation Agent since September, 1933; that during the military occupation in the East Texas Oil Field, when the field was under Martial Law under proclamation

of the Governor of Texas, he was a Lieutenant in the 124th Cavalry; that at that time he became familiar with the conditions in the field and had occasion to make investigations with reference to over-production of oil and the running of oil to tank farms and to local refineries; that his observations then and now are that the small refineries or skimming plants situated in the East Texas Oil Field are the outlets for the major portion of the oil produced in violation of the Proration Laws or what is commonly known as "hot oil;" that during September and October, 1933, he had been engaged in making investigation which showed that refineries disposed of excess oil both before and after July 11, 1933; that these refineries existed and now exist merely for the purpose of disposing of crude oil; that the following listed data was secured by him from the records of the Railroad offices, situated in the East Texas Oil Field and indicate that refineries shipped enormous amounts of crude oil both before and after July 11th and that the products from these refineries listed entered into the stream of interstate commerce.

[fol. 130]

Foshee Refinery

July, 1933

Gasoline	32 Cars
Fuel Oil	4
Distillate	2
Gas Oil	1
	39 Cars.

August, 1933

Gasoline	3

In addition, the following is the amount of crude oil shipped out over this rack during July. No crude was shipped in August. This rack is the property of the Foshee Refinery and no other refinery is located on this rack.

Date 1933	Consignor	Consignee	Destination	# Cars
July 6	Wade Johnson	B. T. McNeil	Westwego, La.	11
" 9	Frank Havell	Calumet Pet. Co.	Calumet, La.	11

[fol. 131]

Date	Consignor	Consignee	Destination	#Cars
" 11	G. W. Simpson	B. T. McNeil	Westwego, La.	11
" 12	R. S. Alexander	M. B. Blake	"	12
" 14	Trinity Refg. Co.	Phoenix Refg.	Eagle Ford, Tex.	20
" 13	Alex R. Shoozer	M. B. Blake	Westwego, La.	9
" 13	A. R. Wood	do		11
" 12	R. S. Alexander	Sterling O & R Co.	Moose Jaw, Sask.	11
" 13	"	M. B. Blake	Westwego, La.	12
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B. T. McNeil is an oil broker with headquarters in Houston, Texas. Witness Behrens made a diligent effort to locate and learn the identity of Mr. Wade Johnson, Frank Havell, G. W. Simpson, R. S. Alexander, Alex. R. Shoozer, and A. R. Woods, listed above, and these are evidently fictitious.

Oil received by truck: None.

Foshee Refining Company

(Gasoline)

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
7-1	Oakley Gas & Oil Co.	Nashville, Tenn.	STCX	9683	8100	Foshee	Fos. #2
7-1	" " " "	"	STCX	9648	8097	"	" #2
7-2	Wilson Oil Products Co.	Mankato, Minn.	PTX	2768	8260	"	" #2
7-3	Hoosier Pet. Co.	Indianapolis, Ind.	GATX	29547	8106	"	

[fol. 132]

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
7-3	T. J. Ryan	St. Louis, Mo.	PTX	4037	8058	"	
7-3	"	"	PTX	4712	8078	"	
7-4	Peoples Nu-Gas Co.	Cambridge City, Ind.	QTX	8316	8064	"	"
7-4	Hoosier Pet. Co.	Indianapolis, Ind.	SHPX	8713	8094	"	"
7-5	Wilson Oil Products Co.	Deer River, Minn.	STCX	9421	8073	"	
7-5	"	St. James, Minn.	GATX	25520	8048	"	
7-7	"	Sibley, Ia.	SHPX	8604	8153	"	"
7-7	Geo. C. Peterson	Dupo, Ill.	GATX	29462	8108	Foshee	Fos. #2
7-7	Wilson Oil Products Co.	Lake Crystal, Minn.	GATX	29356	8105	"	"
7-10	Northland Oil Co.	Stewardville, "	GATX	13565	8085	"	"
7-11	O'Day Oil Co.	Ft. Wayne, Ind.	CYCX	9231	8170	"	" #2
7-11	"	"	GATX	29636	8102	"	" #2
7-11	"	Ossian, Ind.	SHPX	8706	8111	"	" #2
7-11	Wilson Oil Products Co.	Staples, Minn.	GATX	23361	8117	"	" #1
7-11	"	Conde, S. D.	GATX	29463	8108	"	" #1
7-12	"	Elmore, Minn.	SHPX	8615	8124	"	"

(From Texas Oil Products
(Company, Gladewater.

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7-14	O'Day Oil Co.	Auburn, Ind.	PTX	1546	8250	"	"
7-14	Texas Oil Products Co.	K. C., Mo.	CTAX	6971	8135	"	"
7-14	" " " " " "		SHPX	5000	10212	"	"
7-16	" " " " " "		GATX	29569	8102	"	"
7-16	Diverted to Wilson Oil Products Co.	Willmar, Minn. By T. O. P. Co., Gladewater					
7-17	Texas Oil Products Co.	K. C., Mo.	SHPX	8506	8059	"	"
	Diverted to Wilson Oil Products Company, Worthington, Minn. by T. O. P. Co.						
7-17	Texas Oil Products Co.	K. C., Mo.	GATX	15541	8105	"	"
	Diverted to American Pet. Co., Allendale, Minn. by T. O. P. Co.						
7-17	Texas Oil Products Co.	K. C., Mo.	GATX	3143	8213	"	"
	Diverted to Wilson Oil Products Company, Melrose, Minn. by T. O. P. Co.						
7-18	Texas Oil Products Co.	K. C., Mo.	SHPX	9158	8149	Foshee	Foshee
	Changed to Wilson Oil Products Co. 7-25-33, Worthington, Minn. and the shipper was Texas Oil Products Company, Gladewater.						
7-18	Texas Oil Products Co.	K. C., Mo.	GATX	6027	8079	Foshee	
	Changed 7-27-33 to San Burn Oil Co., Care Osburn Refining Co., Osburn, Ind. from Texas Oil Products Co., Gladewater.						
7-19	Modern Refy. Corp.	K. C., Mo.	GATX	2792	8165	Foshee	
	Changed 7-25-33 to Altitude Pet. Co., Fargo, N. D., this bill of lading in lieu of bill of lading covering same car as of July 17th.						

[fol. 134]

Date	Consigned to	Destination	Initl.	Car Nos.	Capy	Shipper	Rack
7-19	Texas Oil Products Co.	Little Rock, Ark.	CTAX	6898	8099	Foshee	
	Changed 7-21-33 to Altitude Pet. Co., Chicago, Ill. Shipper Texas Oil Products Company, Gladewater.						
7-19	Texas Oil Products Co.	Little Rock, Ark.	GATX	14026	8106	"	
	Changed 7-27-33 to G. H. Hammond, Union Stock Yards, Chicago, Shipper Texas Oil Products Co., Gladewater.						
8-18	Gulf Production Co. Care E. Iles.	Overton, Texas	QTX	8722	8119	Foshee	
8-19	Gaither Oil Co.	Ft. Worth, Tex.	GATX	22295	8120	"	Fos. #2
8-26	Century Oil Co.	"	CYCX	8720	8202	"	"
		(Fuel Oil)					
7-1	MK&T Co.	Denison, Texas.	SHPX	8422	8042	Foshee	Fos. #2
7-1	"	"	SHPX	8424	8046	"	" #2
7-1	"	"	SHPX	10244	10142	"	" #2
7-8	Midland Coal Co.	Honey Grove, Tex.	SHPX	10687	10137	"	"

[fol. 135]

(Distillate)

7-1	Northland Oil Co.	Dupo, Ill.	GATX	13068	8075	"	" #2
7-5	Home Oil Co.	Red Wing, Minn.	CTAX	6917	8095	"	

(Gas Oil)

7-18	Texas Oil Products Co.	Little Rock, Ark.	ISTX	412	8109	"	"

Changed to Petroleum Products, Inc., Higginsville, Mo., Texas Oil Products Company, Gladewater on July 21st. Issued in exchange original B/1. dated Gladewater, July 18th.

Carnation Refinery, Gladewater, Texas

July

Gasoline	22	Cars
Gas Oil	4	"
Kerosene	2	"
Distillate	4	"
Tractor Fuel	1	"
	33	"

[fol. 136]

August

Gasoline	10	Cars
Gas Oil	4	"
Kerosene	5	"
Distillate	1	"
Fuel Oil	3	"
	23	"

(Gas Oil)

Date	Consigned to	Destination	Initl.	Car. Nos.	Capy.	Shipper	Rack
7-12	Modern Refy. Corpn.	Dupo, Ill.	SHPX	8959	7981	Carnation	Ty.
7-17	Modern Refy. Corpn.	Jackson, Miss.	GATX	29502	8104	"	
7-21	M. B. Chatfield	Celina, Texas	CTAX	8152	8170	"	"
8-18	National Oil & Grease Co.	Marshall, Ark.	CATX	8082	8064	Primrose	
8-22	Saunders Pet. Co.	Howarden, Ia.	SHPX	8425	8055	Carnation	"
8-25	National Oil & Grease Co.	Oxford, Miss.	SHPX	11633	10217	"	"
8-31	Primrose Pet. Co.	N. Little Rock	SHPX	10110	10063	"	

[fol. 137]

(Kerosene)

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
7–17	Altitude Pet. Co.	K. C. Mo.	GATX	29322	8106	Carnation	
7–20	Modern Refy. Corp.	" "	GATX	13514	8087	"	Ty.
8–12	" " "	E. St. Louis, Ill.	STCX	8708	8100	"	"
8–15	" " "	" "	IMRX	1185	8083	"	"
8–18	" " "	Lebanon, Tenn.	CYCX	111	8083	"	"
8–21	" " "	E. St. Louis, Ill.	GATX	2781	8167	"	"
8–31	Pet. Import & Export Corp.	St. Rosa, La.	GATX	15052	8106	"	"

(Distillate)

7–12	Western Pet. Co.	Omaha, Neb.	HTCX	1042	8082	"	
7–17	Barron Oil Co.	Shenandoah, Ia.	SHPX	8684	8059	"	
7–23	Modern Refy. Corp.	Dupo, Ill.	IMRX	1180	8086	"	
7–29	Cooper Keller Oil Co.	Rice Lake, Wis.	QTX	8316	8064	"	
8–20	Primrose Pet. Co.	N. Little Rock	GATX	5469	8087	"	"

(Gasoline)

7– 1	Modern Refy. Corp.	Ossian, Ind.	PTX	2000	8250	"	"
7– 1	American Pet. Co.	Carroll, Ia.	SHPX	8468	8229	"	"
7– 1	"	Oskaloosa, Ia.	GATX	15541	8106	"	"
7– 5	Modern Refy. Corp.	Dupo, Ill.	PTX	4061	8002	"	"
7– 5	" " "	" "	CTAX	8094	8067	"	"

[fol. 138]

7- 7	City of Dallas	Dallas, Texas.	SIMX	1223	10070	"	"
7- 8	Texas Oil Products Co.	Wilmar, Minn.	GATX	29309	8108	"	"
7-11	T. J. Ryan	St. Louis, Mo.	SIMX	1613	10227	"	"
7-11	" "	" "	GATX	6439	8120	"	"
7-11	Penn-Bright Oil Co.	Chicago, Ill.	SIMX	1032	10070	"	"
7-12	Cooper Keller Oil Co.	Wilson, Minn.	PTX	6134	8095	"	
7-14	Gaither Oil Co.	Ft. Worth, Tex.	PTX	4670	8081	"	"
7-17	Oakley Gas & Oil Station	Atlanta, Ga.	HTCX	1110	8069	"	
7-17	American Pet. Co.	Evansville, Ind.	HTCX	1147	8086	"	"
7-19	Cooper Keller Oil Co.	Rice Lake, Wis.	APTX	108	8084	"	"
7-21	Red Ace Pet. Co.	Nashville, Tenn.	GATX	25558	8059	"	"
7-21	Modern Refy. Corp.	Dupo, Ill.	HTCX	1017	8080	"	"
7-21	" " "	" "	HTCX	1006	8087	"	"
7-21	***" " "	" "	SHPX	8727	8028	"	"
7-25	C. R. Kline, % Charlie Macklen,	Gravois Switch, Gravois, Mo.	GATX	15551	8018	"	
7-29	Cooper Keller Oil Co.	Wilson, Minn.	GATX	26589	8096	"	"
8-11	" " " "	" "	PTX	4712	8078	"	
8-12	Modern Refy. Corp.	E. St. Louis, Ill.	PTX	3459	8252	"	"

[fol. 139]

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
8–21	Cooper Keller Oil Co.	Wilson, Minn.	GATX	6411	8127	"	
8–21	" " " "	Minneapolis, Minn.	SIMX	9932	8152	"	"
8–21	" " " "	" "	CYCX	8517	8083	"	"
8–24	" " " "	" "	PTX	1546	8250	"	"
8–24	" " " "	" "	PTX	4061	8051	"	"
8–28	" " " "	" "	SHPX	11373	10074	"	"
8–29	T. J. Vogel Oil Co.	Omaha, Neb.	GATX	13190	8085	"	"
8–31	Cooper Keller Oil Co.	Minneapolis, Minn.	CTAX	8124	8165	"	"
***			GATX	29520	8104	"	"
7–21	Red Ace Pet. Co.	Paris, Tenn.	HTCX	1005	8110	"	"
		(Tractor Fuel)					
7–29	Penn-O-Tex Oil Co.	Sidney, Neb.	HTCX	1032	8070	Carnation Ty.	
		(Fuel Oil)					
8–21	Collin County Mill & Elev. Co.	McKinney, Tex.	SHPX	8876	8014	"	"
8–26	do	" "	SHPX	8992	7982	"	"
8–26	Farmers & Merchants Compress & Whse. Co.	Sulphur Spgs. Tex.	SHPX	9095	8155	"	"

[fol. 140]

Lake Refining Co., Gladewater, Texas

July, 1933

Gas Oil	17
Kerosene	2
	19 Cars

August, 1933

Gas Oil	1
Top Crude	1
	2 Cars.

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
7– 1	L. A. Black	DeWitt, Ark.	SHPX	8136	8072	Gas Oil	Lake
7– 2	L. A. Black	DeWitt, Ark.		7627	7611	" "	"
7– 3	L. A. Black	DeWitt, Ark.	CTAX	8105	8167	" "	"
7– 3	L. A. Black	Gillette, Ark.	GATX	29858	8119	" "	" Team
7– 6	L. A. Black	DeWitt, Ark.	PTX	2561	8258	" "	" "
7– 7	Blue Seal Oil Co.	Carlisle, Ark.	SHPX	9183	8138	" "	" "

[fol. 141]

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
7- 8	L. A. Black	DeWitt, Ark.	WRDX	64	8049	" "	" "
7-10	L. A. Black	Yoder, Ark.	CTAX	7000	8111	" "	"
7-11	L. A. Black	DeWitt, Ark.	HECX	1012	10162	" "	"
7-11	L. A. Black	DeWitt, Ark.	STCX	1330	10097	" "	" "
7-12	L. A. Black	DeWitt, Ark.	ISTX	232	8008	" "	"
7-14	L. A. Black	DeWitt, Ark.	SHPX	2402	10040	" "	"
7-16	L. A. Black	Gillette, Ark.	CTAX	8090	8064	" "	" "
7-17	L. A. Black	DeWitt, Ark.		2085	8067	" "	" "
7-18	L. A. Black	DeWitt, Ark.	STCX	8320	8050	" "	" "
7-19	L. A. Black	DeWitt, Ark.	GATX	1892	8181	" "	" "
7-21	L. A. Black	DeWitt, Ark.	SHPX	8464	8234	" "	" "
8- 8	Star Refg. Co.	Ft. Worth, Tex.	SHPX	9137	8140	" "	" "
8- 9	Radio Pet. Co.	Teague, Tex.	KTX	8043	8043	" "	" "
8-25	City of Crete	Crete, Neb.		215	8052	" "	" "
7-14	Blue Seal Oil Co.	DeWitt, Ark.	CYCX	9171	8173	Kerosene "	"
7-21	Withers and Wellford, Inc.	Memphis, Tenn.	GATX	29351	8102	"	" "
8- 9	Star Refg. Co.	Ft. Worth, Tex.	SHPX	1027	10024	Reduced Crude for further refining.	"
8-26	Apex Oil Co.	Granite City, Ill.	GATX	2830	8097	Gasoline	Lake Ty.

[fol. 142]

Upshur Refining Co., Gladewater, Texas

July, 1933

Gasoline	2
Distillate	2
Gas Oil	1
	5 Cars.

August, 1933

Fuel Oil	2
Gas Oil	4
Cracking Stock	1
Petroleum Oil	1
	8 Cars.

(Distillate)

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
7–12	Ark.-La. Pet. Co. Notify Ark-La. Pet. Co., Stuttgart, Ark.	Gillette, Ark.	ISTX	504	8106	Upshur	Team

[fol. 143]

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
7–17	Ark-La. Pet. Co.	Carlisle, Ark.	CTAX	7004	8111	"	"
		(Gas Oil)					
7–17	Farmers Co-Operative Gin Co.	Celina, Tex.	CTAX	8084	8087	"	"
7–25	North Texas Gin Co.	Prosper, Tex.	SHPX	8549	8014	"	"
7–26	Standard Tilton Milling Co.	Dallas, Texas.	WRDX	61	8050	"	"
8– 4	Chief Refg. Co.	Stuttgart, Ark.	SHPX	7627	7611	"	"
	From Chief Refg. Co.						
8–19*	Primrose Pet. Co.	Memphis, Tenn.	SHPX	8722	8033		"
8–19*	"	"	SHPX	8817	7996		"
	*From Upshur Refining Company - Shipper - Primrose Petroleum Co. Per Upshur Refining Company, H. T. Melton.						
8–28	Modern Refg. Corp.	Little Rock, Ark.	SHPX	8322	8125	Upshur	Team
8–31	" " "	Hattiesburg, Miss.	SHPX	2392	10036	"	"
		(Fuel Oil)					
8– 5*	Dennison Compress Co.	Dennison, Texas.	SHPX	11759	10212		
	*From Frank B. Chatfield, Shipper Frank B. Chatfield, Per Upshur Refining Company.						

[fol. 144]

Date	Consigned to	Destination	Initl.	Car Nos.	Capy.	Shipper	Rack
8– 7*	Sherman Compress Co.	Sherman, Tex.	SHPX	8872	8007		"
	*From Upshur Refg. Co., Shipper Frank B. Chatfield, Upshur Refg. Co., By H. Melton						
8– 8*	Collin County Mill & Elev. Co.	McKinney, Tex.	GATX	25842	8003		
	*From Upshur Refg. Co., Shipper Frank B. Chatfield, Upshur Refg. Co., H. T. Melton.						
	(Cracking Oil)						
8–23	Petroleum Products Co.	Omaha, Neb.	GATX	26593	8095		Team
	Primrose Petroleum Company, Per Upshur Refining Company.						
8–23	Petroleum Products Co.	Omaha, Neb.	SHPX	8080	8096		"
	Primrose Petroleum Company, Dallas, Texas, Per Upshur Refg. Co.						
8–27	Petroleum Products Co.	Fayette, Mo.	SHPX	7605	7623		
	From Upshur Refg. Co., Shipper Primrose Pet. Co., Per Upshur Refg. Co.						

[fol. 145] Walter S. Behrens further stated that there are fifty-one refineries in the East Texas Field and that the following eleven refineries have failed to make the reports required by the Department of the Interior:

Panama, Canyon, Foshee, Carnation, Lake, Locke, Southport, Owl, Lotus, Hanover, and Acme.

The Defendants introduced in evidence a statement by Kent B. Knox, who stated that he is employed by the United States Department of the Interior, Division of Investigations, as an Oil Enforcement Agent in the East Texas Oil Field; that in the performance of his duties he compiled from official records of the War Department, U. S. Engineer Office, the Collectors of Customs, Department of Commerce, and the Railroad Commission of Texas, the following data:

Tanker Movements

All Movements Through Texas Ports

Figures taken from records of the War Department, United States Engineer Office, Galveston. Reduced from tons (2000 lbs) to barrels of 42 gallons on the basis of 6.44 barrels per ton for crude oil, 7.21 barrels per ton for gasoline, 7.00 barrels per ton for kerosene, and 6.28 barrels per ton for gas and fuel oil.

July, 1933

Crude Oil	15,424,674	barrels
Gasoline	6,678,363	"
Kerosene	704,844	"
Oil, Gas & Fuel	3,466,114	"

[fol. 146] August, 1933

Crude Oil	16,275,309	barrels
Gasoline	5,864,830	"
Kerosene	1,068,270	"
Oil, Gas & Fuel	3,787,091	"

September, 1933 (Incomplete)

Figures from Reports by Collectors of Customs, Department of Commerce; Foreign & Coastwise Movement.

Crude Oil—East Texas	4,689,534	barrels
Conroe	1,303,165	"
Other Fields	6,235,617	"
	12,228,316	"
Gasoline	1,122,598	"
Kerosene	238,564	"
Oil, Gas & Fuel	523,069	"

October, 1933 (Gasoline only & Incomplete)

Gasoline	173,839	barrels

Tanker Movement From Louisiana Ports

Reports by Collectors of Customs, Department of Commerce, show large amounts of East Texas crude shipped from Louisiana Ports.

Baton Rouge, La.:

July, 1933

Gasoline	247,298	barrels
Kerosene	47,949	"

August, 1933

Gasoline	470,937	"
Kerosene	20,898	"

September, 1933

Gasoline	244,894	"
Kerosene	6,673	"

New Orleans, La.:

July, 1933

Gasoline	274,065	"

August, 1933

Gasoline	199,930	"

[fol. 147] Shipment of By-Products by Railroad from East Texas July 18 to 31, Incl., 1933

(Figured at 193 barrels per car, 42 gallons per barrel)

Gasoline.....	910	Cars	175,630	barrels
Kerosene.....	90	"	17,370	"
Gas Oil.....	277	"	52,496	"
Distillate.....	68	"	13,124	"
Naphtha.....	17	"	3,281	"
Fuel Oil.....	141	"	27,213	"

August, 1933

Gasoline.....	2,188	Cars	422,284	"
Kerosene.....	292	"	56,356	"
Gas Oil.....	611	"	117,923	"
Distillate.....	393	"	75,849	"
Fuel Oil.....	1,157	"	223,301	"
Naphtha.....	38	"	7,334	"

September, 1933

Gasoline.....	2,121	Cars	409,353	"
Kerosene.....	283	"	54,619	"
Gas Oil.....	578	"	111,554	"
Distillate.....	376	"	72,568	"
Fuel Oil.....	1,878	"	362,454	"
Naphtha.....	41	"	7,913	"

September, 1933

(Topped Crude Included)

Export.....	2,995	Cars	578,935	"
Interstate.....	2,773	"	535,189	"
Intrastate.....	960	"	185,280	"

94% Interstate & Export

October, 1933

(1st to 26th Incl.)

(Topped Crude Included)

Export.....	3,177	Cars	613,161	barrels
Interstate.....	2,151	"	415,143	"
Intrastate.....	789	"	152,277	"

93¼% Interstate & Export.

[fol. 148] The Defendants introduced in evidence a statement by E. F. Everheart and T. J. Breeding, who stated that they were representatives of the Railroad Commission of Texas; that about September 4, 1933, V. E. Cottingham, their Deputy Supervisor, instructed them to make an investigation of the A. & P. Oil Company (A. F. Anding) Brightwell No. I Well, located in the R. W. Smith Survey, Rusk County, Texas; that they were also instructed to meet Mr. A. H. Alcorn of the Department of the Interior, and after meeting Mr. Alcorn and Mr. Martin, another representative of the Department of the Interior of the United States, they proceeded to the Brightwell No. I Well, on the above mentioned lease, and, upon examination of said well, found the following:

A four inch pipe extending from the above well eastward for a distance of about 165 feet, at which point this four inch line was welded to another four inch line running in a north-south direction. The north end of this pipe extended north for about 15 feet, thence east for a few feet, same being open-ended, and the south end extended southward for about 1000 yards. Examination disclosed a gate valve about 4 feet west of the welded junction of the two four inch lines and also another gate valve about 4 feet north of this welded junction.

They requested the man in charge of the above lease to disconnect the four inch line from the well which connects with the north-south line, this he did. The east-west line was disconnected between the welded junction and the gate four feet to the west. After it was disconnected and the open end bull-lugged, they sealed this gate valve with the Railroad Commission seals. To the best of their knowledge, this four inch line connects into the oil string of casing in the well some 6 or 8 feet below the casing-head outlets.

[fol. 149] T. J. Breeding, C. F. Fullingim, and W. C. Howison stated that on September 5, 1933, Deputy Supervisor V. E. Cottingham asked them to make a supplemental report on the A. & P. Oil Company's Brightwell No. I Well, located in the R. W. Smith Survey, Rusk County, Texas; that Mr. Cottingham explained that the previous examination made September 4th, above set out, did not show definitely that the east-west four inch line tied into the oil string or casing, and that he wanted them to dig

down alongside of the casing and determine if this connection was made; that they arrived at the well about 3:00 PM and proceeded to dig down by the casing where the by-pass was supposed to be welded into the casing; that after they had dug down about four feet below the surface, a Mr. Hickey, who is in charge of the above well, told them that it would be impossible to dig much further down, because there were 165 sacks of cement around the connection which they were looking for; that he then told them, in order to save them the trouble of digging up the connection, that he would tell them about it; that he said that the four inch pipe was welded through the surface casing and oil string approximately 6 or 8 feet below the casing-head outlets and that 23 feet east of the well another gate valve would be found on the four inch line and that they dug up this gate and found it closed.

The Defendants introduced in evidence a statement by E. N. STANLEY, Chief Investigator for the Railroad Commission of Texas, and V. E. Cottingham, Deputy Supervisor for the Railroad Commission of Texas, who stated that on the 6th day of September, 1933, Mr. Tom Potter came [fol. 150] to the Railroad Commission's office, located in Kilgore, Texas; that Potter said in their presence that he had come for the purpose of discussing with them the by-pass connection which had been found on the A. & P. Oil Company (A. F. Anding) Brightwell No. I Well, located in the R. W. Smith Survey, Rusk County, Texas; that during the discussion, he represented himself as being a part owner of the above well and wanted to know if they were going to file a violation complaint with the Attorney General's Department for having a by-pass connection; that they told him the matter would be referred to the Attorney General's Department for opinion; that Mr. Potter readily admitted a four inch pipe had been welded into the oil string casing and said that the connection had been made for by-passing oil from the well, but that it had not been used and that they did not intend to use it until the embargo was lifted; and that Potter also stated that a concrete slab was between this connection and the surface of the ground.

E. N. Stanley further stated that since January 24, 1933, he has been in charge of proration in the East Texas Oil

Field for the Railroad Commission of Texas; that the East Texas Oil Field now has approximately 11,000 producing wells; that in the field there are hundreds of miles of pipe lines, gathering systems, and other connections used for the transportation of oil from wells to tanks, to gathering systems, to loading racks and refinery connections; that in the performance of his official duties, as Chief Investigator for the Railroad Commission in the East Texas Oil Field, among many violations, the following violations had been brought to his attention:

Southport Pet. Co.: This refinery has received oil from the Travis and Kroll, Crowder leases and King leases, Van [fol. 151] Winkle Survey, which has been illegally produced continuously and still doing so. The above company was caught using by-pass on both above mentioned leases.

The Southport Petroleum Company does not make out reports of any kind, operate a pipe line without permit, refuse to give any kind of information whatsoever and have an eight foot wire fence around the refinery proper which prevents inspection or investigation by Railroad Commission employees of their use of illegally produced crude oil.

On September 20th, 1933, their I & G N Ry. lease well was caught flowing to Southport Pet. Co., refinery without making reports nor obtaining approved tenders.

Panama Refining Co.: This refinery has run illegally produced oil from the Jay Simmons well, Ben Bean lease, Van Winkle Survey. They were caught using a by-pass on March 22nd and reported to Attorney Gen'l. The Panama Refining Company has continuously run hot oil, and have refused the Railroad Commission any kind of information and inspection of their properties.

The Defendants introduced in evidence a statement by Colonel Louis S. Davidson, who stated that during the military occupation of the East Texas Oil Field, he was commanding officer of the 124th Cavalry, which unit of the National Guard was designated by the Governor to administer military law in this field while it was under martial [fol. 152] law by proclamation of the Governor of the State of Texas; that during this occupation and since he has kept in close touch with the conditions in the East Texas Oil

Field and knows that there existed there a chaotic condition; that the Rules and Regulations of the Railroad Commission were openly scoffed at; that many operators, producers and refiners and others continuously violated the Rules and Regulations as to production and movement of oil; that millions of barrels of illegally produced oil entered the channel of interstate commerce and that conditions as existed in this field had a demoralizing effect upon the national markets; that without Federal control of production at its source or distribution from the field, both in the crude petroleum and its products, that these conditions will again return to the East Texas Oil Field, thus destroying the national markets and, in fact, the oil industry itself.

He further stated that while he was commanding officer in the East Texas Oil Field, his staff of officers and enlisted men uncovered by-passes in enormous numbers, they discovered every conceivable by-pass that could be thought of by an oil racketeer, unbelievable systems of connection and network of lines were uncovered, the existence of which, without having actually observed them, is almost unbelievable; that millions of barrels of illegally produced oil have left the East Texas field and hundreds of royalty owners, land owners, and fee owners have been defrauded of their property by such over-production which, in fact, is nothing but stealing that part from the common pool to which his neighbor is entitled; that in his opinion, the greatest step toward eliminating these chaotic conditions from the East Texas Oil Field was taken by President Roosevelt on July 11, 1933, when he signed his Executive Order prohibiting [fol. 153] illegal or "hot oil" from entering into the stream of interstate commerce. Conditions are greatly improved in the East Texas Oil Field since that date; that it is witness's belief that without Federal control in this field conditions would be unbearable; and that the national oil markets would be destroyed and thousands of people would be destitute.

He further stated that during the period from August 17, 1931, to December 20, 1932, a portion of which time the field was under martial law, all of the refineries in the East Texas Oil Field, with the exception of two or three, had their own pipe line or gathering system; that these refineries did not use seals on the lock stops on the tank batteries located on the leases from which they were receiving

oil as is required and which is done by legitimate pipe line companies; that these lock stops can be opened at will allowing oil to flow from the lease to the refineries at the same time that the well is producing oil into tanks and that some of the refineries had wells flowing directly to storage tanks located at the refineries; that it is impossible to determine the amount of oil produced from leases to which these refineries are connected without keeping a man on duty at such wells the entire 24 hours in each day, or without gauging the storage tank located at the refinery; that he is familiar with the pipe line system in Gladewater and Kilgore, Texas, and that oil can be delivered at any point in the East Texas Oil Field to almost any refinery in the field and can be delivered from one refinery to another. He further stated that in most cases, there are loading racks at the refinery; that refineries having no loading racks have lines from the refinery to loading racks; that during the months of April, May, June and July, 1933, hundreds of cars of crude oil were loaded and shipped out of the East Texas [fol. 154] Field by refineries; that A. & P. Oil Company, which is Anding & Potter, the owner of the Panama Refining Company, loaded hundreds of cars of crude oil which were shipped to the coast, where same was put into foreign and interstate commerce; that there were numerous cases on record where the surplus over-produced oil had gone to the refineries, and the royalty owner had received one price for his legal oil and a much smaller price for the excess oil; that in many instances, in the past he has records to show that the royalty owner did not receive payment for a large majority of the over-produced oil that went to the refinery; that it is absolutely useless to check pipe line, leases and movement of oil by tank cars from loading racks other than the refineries and allow the refineries to run unrestrained in the handling of crude oil, when, in fact, the majority of these refineries are not only in the refining business but are brokers for crude oil; and that unless all other outlets are checked, there is no way of arriving at the total production in the East Texas Oil Field.

The Defendants introduced in evidence statements by K. B. KNOX, H. L. BRAY, HOWARD E. TYSON and J. G. FLOYD, each of whom stated that he is an Oil Enforcement Agent

of the Department of the Interior; that in the performance of his official duties in the State of Texas it has been necessary to make investigations as to the production of illegal oil and the use of illegal underground pipe net work, known as by-passes; and that he has listed a considerable number of such illegal practices which he has discovered in the East Texas Field.

[fol. 155] The Defendants introduced in evidence a statement of NEAL POWERS, who stated that he is Assistant Attorney General for the State of Texas; that it is his duty to prosecute cases and suits for the State of Texas arising out of violations of the rules and regulations of the Railroad Commission of Texas; and that he has compiled a list of the cases pending before his office against connections of refineries situated in the East Texas Oil Field for violations occurring from May 4, 1933, to August 1, 1933, which list shows that there are a large number of alleged violations by connections of refineries who are complainants in this case.

The Defendants introduced in evidence a statement by A. D. RYAN, who stated that his official position is that of Special Agent in Charge of the Tyler Office of the Division of Investigations, Department of the Interior; that on July 14, 1933, he was directed by the Director of Investigations to proceed to East Texas for the purpose of enforcing the Regulations issued by the Secretary of the Interior under Section 9 (c) of the Act of June 16, 1933, Public 67 (73 Congress); that when he arrived in East Texas he found that a large number of operators, refiners, gathering systems and pipe lines were utterly disregarding the Rules and Regulations of the Railroad Commission of Texas, that in the month of June some five million barrels of excess oil were produced and run either to storage or from the East Texas Oil Field; that in July this overproduction amounted to approximately two million barrels of oil; that in August excess production amounted to in the neighborhood of six hundred thousand barrels; that taking into consideration the enormous number of wells, which [fol. 156] is in round numbers 11,000, to properly police each well would require an enormous force of men; and

that he believes that the proper and successful way in which to enforce the Regulations issued in Section (9) (c), is by requiring reports as designated in the Regulations issued by the Secretary on July 15 and 25, 1933.

He further stated that it is his belief that the small refineries and skimming plants, situated in the East Texas Oil Field, are the outlet either for crude petroleum or the products thereof for a large part of the oil now being produced in excess of the allowable as set by the Railroad Commission of Texas; that he has made many inspection trips throughout the field and, from his observations and by checking reports secured from some refineries, knows that products far in excess of crude receipts as shown are disposed of by these "hot" refineries; that the agents of his office have been hindered and prevented from properly enforcing the regulations issued under Section 9 (c) by these "hot" refineries; that many obstacles have been placed in the way of these agents; and that while they have not openly been threatened with violence, they have been, by various means, prevented from securing reports and gauges of refinery tanks, which information and data is necessary if President Roosevelt's Executive Order of July 11, 1933, prohibiting illegally produced oil from entering the stream of interstate commerce is to be successfully enforced.

The Defendants offered in evidence a statement by AVERY H. ALCORN and a chart prepared by him showing the relation between the Total Daily Average Oil Movements, [fol. 157] the Total Daily Average Allowable Production, and the Total Daily Average Over-Deliveries of Oil in barrels in the East Texas Field from February 27, 1933, to September 26, 1933. He stated that he believed the statements shown in the chart are true.

The Defendants introduced in evidence a statement by J. H. LEECH, who stated that he is a Special Agent of the Division of Investigation, Department of Interior; that in connection with his official duties, it has been necessary for him to make a careful study of the Regulations issued by the Secretary of the Interior on July 15, 1933, and the

Amendments thereto; that he is also familiar with the various forms of the Railroad Commission requiring reports; that the Railroad Commission forms requiring reports from producers, shippers, gathering systems and pipe lines have been adjusted to comply substantially with the requirements of the Federal Regulations; that it has been arranged that they may continue to be filed with the Railroad Commission, which furnishes the Department of Interior with a copy of each report; that the reports are furnished to producers, shippers, gathering systems and pipe lines without cost, that it appears that no hardship has been placed upon anyone required to furnish these reports, since the Regulations are reasonable and do not demand information which is not easily acquired; and that all of the reports are necessary for the proper enforcement of the National Industrial Recovery Act. He further stated that it is also necessary to require reports from processors of petroleum, in order to prevent the interstate shipment of illegally produced oil; that for this reason Regulation V was inserted in the Regulations and requires each pur- [fol. 158] chaser, shipper or refiner of petroleum, including all persons engaged in the processing of petroleum in any manner, to make reports showing the place and date of the receipt, the names and addresses of the producers and of the persons from whom the petroleum was received, the disposition of said petroleum, including the place and dates of delivery, the amounts delivered, the names and business addresses of the consignees, the transporting agencies and the amount of petroleum held in storage at the end of the calendar month; that this regulation is not unreasonable for the reason that it is believed that for the successful operation of any business, the directing heads thereof should, at all times, have this data available, since it is necessary to them in order to determine the financial condition of their businesses and also in order to make necessary tax reports to the State and Federal Governments; and that he has determined that a large part of the shipments from refiners in the East Texas Field enter interstate commerce.

The Defendants offered in evidence the following exhibits:

Executive Order of the President dated July 11, 1933, prohibiting the transportation in interstate and foreign

commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State Law or valid Regulation or Order prescribed thereunder by any board, commission, officer, or other duly authorized agency of the State.

Executive Order promulgated by President Roosevelt [fol. 159] dated July 14, 1933, authorizing the Secretary of the Interior to exercise all the powers vested in the President for the purpose of enforcing Section 9 (c) of the Act of Congress of June 16, 1933, (Public No. 67, 73d Congress), and said Order, including full authority to designate and appoint such agents and to set up such boards and agencies as he may see fit, and to promulgate such rules and regulations as he may deem necessary.

Defendants then offered in evidence their Exhibit No. I, being a Stipulation by the Attorneys for complainants and defendants which is in words and figures as follows:

DEFENDANT'S EXHIBIT No. I

STIPULATION

Come now the plaintiffs and the defendants by their respective counsel and hereby stipulate and agree that on the final hearing in the above entitled cause the evidence or testimony produced or introduced may be so produced or introduced in the form of affidavits, and they respectively, on behalf of the plaintiffs and defendants, waive the right of cross-examination or the production or introduction of oral testimony, and submit the cause to the court for decision upon the affidavits which each of them respectively offer on said final hearing.

Dated at Tyler, Texas, in said District, this 6th day of November, 1933.

F. W. Fischer, Attorney for Plaintiffs. Charles Fahy, Attorney for Defendants.

[fol. 160] The above and foregoing is all the evidence necessary for a review of the rulings assigned as error on this

appeal introduced at the trial of said cause and all proceedings had in the trial thereof.

Wherefore, A. D. Ryan, J. Howard Marshall and S. D. Bennett, defendants and appellants, pray that the above statement of evidence be settled, approved and allowed by the above-entitled court as a true, full and correct and complete statement of all of the evidence necessary for a review of the rulings assigned as error on this appeal taken and given on the trial of said cause, for use on the appeal taken to the United States Circuit Court of Appeals for the Fifth Circuit.

Dated this 2 day of April, A. D. 1934.

J. Howard Marshall, Charles Fahy, Chas. I. Francis, Attorneys for Defendants and Appellants.

STIPULATION AS TO STATEMENT OF EVIDENCE

It is hereby stipulated that the above and foregoing statement of evidence is a true and correct statement of all of the evidence necessary for a review of the rulings assigned as error on this appeal and the same may be approved by the Judge without notice.

J. Howard Marshall, Charles Fahy, Chas. I. Francis, Attorneys for Defendants and Appellants. F. W. Fischer, Attorney for Plaintiffs and Appellees.

[fol. 161] IN UNITED STATES DISTRICT COURT

ORDER SETTLING STATEMENT OF EVIDENCE

The foregoing statement of evidence is in all respects hereby approved and settled as a true and correct statement of all the evidence necessary for a review of the rulings assigned as error on this appeal and adduced on the trial of the above-entitled action.

Dated this 2nd day of April, A. D. 1934.

Randolph Bryant, United States District Judge.

[File endorsement omitted.]

In United States District Court

Decree—Filed Feb. 21, 1934

Came on to be heard the above styled and numbered cause, together with the above numbered causes consolidated therewith; and thereupon came the Panama Refining Company, a corporation, and A. F. Anding, complainants in Cause No. 635, with their attorney, F. W. Fischer; and came also Locke Refining Company, a corporation, Carnation Refining Company, a corporation, Foshee Refining Company, a corporation, Upshur Refining Company, a corporation, Supreme Refining Company, a corporation, Lake Refining Company, a corporation, Southport Petroleum Company, a corporation, Canyon Refining Company, a corporation, Lotus Refinery, a partnership composed of Jack Bell and W. H. Williams, and J. P. McGee, complainants in [fol. 162] Cause No. 636, with their attorney, F. W. Fischer; and came also Hanover Refining Company, a copartnership composed of J. S. Presnall, Jr., Brown McCallum, and Jack Buckley, Arrow Refining and Producing Company, a corporation, H. I. Johnson, doing business under the firm name of H. I. Johnson Refinery, Deere Creek Oil Company, a corporation, and B. F. Trawick and H. E. Wright, partners, doing business under the name of Dutch Rose Refining Company, complainants in Cause No. 640, with their attorney, F. W. Fischer; and came also the defendants A. D. Ryan, J. Howard Marshall, and S. D. Bennett, with their attorneys, and announced ready for trial; and the Court having considered the pleadings, evidence, and argument of counsel in said original cause and the consolidated causes above named, is of the opinion that said complainants are entitled to injunctive relief.

It is therefore ordered, adjudged and decreed as follows, to wit: that the defendants, A. D. Ryan, Special Agent of the Division of Investigation, Department of Interior of the United States, S. D. Bennett, United States Attorney, Eastern District of Texas, and J. H. Marshall, Special Assistant to the Attorney General of the United States be and they are hereby permanently enjoined and restrained from enforcing any rule or regulation promulgated by the Secretary of the Interior or other designated agent under the National Industrial Recovery Act insofar as the same applies to the production of petroleum or the refining and

storage thereof, or the transportation of petroleum or the products thereof in intrastate commerce.

Said defendants, their servants, agents and employees and any one else purporting to act under the authority of the National Industrial Recovery Act or any rule or regula- [fol. 163] tion promulgated thereunder, are hereby perpetually restrained and enjoined from going upon or about the premises of complainants or in any wise interfering with them or molesting them in the conduct of their business by reason of the provisions of The National Industrial Recovery Act or regulations promulgated thereunder.

It is further ordered that the said defendants A. D. Ryan, S. D. Bennett and J. Howard Marshall be served by the marshal with a copy of this permanent injunction.

It is further ordered that the complainants recover of and from said defendants their costs in this behalf expended.

To the aforesaid order and decree said defendants, and each of them, duly except in open court.

Dated this the 21st day of February, A. D. 1934.

Randolph Bryant, United States District Judge.

[File endorsement omitted.]

In United States District Court

Motion for Filing Findings of Fact and Conclusion of Law—Filed Feb. 26, 1934

Now comes the defendants in the above entitled and numbered cause and moves that this Honorable Court file its [fol. 164] findings of facts specially, and state separately its conclusions of law thereon.

Dated this the 26th day of February, 1934.

Chas. I. Francis, Attorney for Defendants.

[File endorsement omitted.]

In United States District Court

Findings of Fact and Conclusions of Law—Filed March 17, 1934

This cause above styled and numbered, together with the numbered causes consolidated therewith, came on to be heard before this Court on November 6, 1933; came the va-

rious parties complainant with their attorneys and the various parties defendant with their attorneys; and thereupon said cause was heard on the application for temporary injunction and by agreement of all the parties and with consent of the Court, it was stipulated, at the conclusion of the testimony, that this cause also should be determined upon its merits; and the Court having considered the pleadings, evidence, agreements and brief of counsel upon the issues presented, under the stipulation that such issues were those made by the amended Bill of Complaint filed by the Panama Refining Company, et al., on October 23, 1933, and the answer thereto filed by the defendants on November 6, 1933, makes the following findings of fact:

I

That the Panama Refining Company and the other complainant refiners are the owners and operators of crude oil [fol. 165] refining plants located in or adjacent to the East Texas Oil Field, purchasing all of their oil requirements from various and sundry producers in the East Texas Oil Field and that said refiners sell their products to dealers within the State of Texas, as well as to dealers outside of the State of Texas.

II

That A. F. Anding and the other complainant producers own and operate various oil and gas leases in the East Texas Oil Field and that such producers are not engaged in shipping petroleum or the products thereof outside of the State of Texas.

III

That the complainant refiners are not engaged in interstate commerce, except as to that portion of their refined products of crude oil that they manufacture in their respective refining plants in Texas and sell and have transported to other states; nor does the refining of crude petroleum, and the intrastate sale or transportation of refined petroleum products, affect interstate commerce, except incidentally and remotely.

IV

That the complainant producers are not engaged in interstate commerce nor does the production of petroleum in

excess of quotas allocated by a state regulatory body affect interstate commerce, except incidentally and remotely.

V

That defendant A. D. Ryan is acting under direction from and as the agent of the Secretary of the Interior to whom the President of the United States has duly delegated his [fol. 166] powers and duties under the National Industrial Recovery Act for the purpose of enforcing Section 9 (c) thereof and who, under Presidential authorization, is Administrator of the Code of Fair Competition for the Petroleum Industry.

VI

That defendant J. Howard Marshall is a Special Assistant to the Attorney General of the United States for the purpose of assisting and aiding in the enforcement of Section 9 (c) and the regulations adopted under the National Industrial Recovery Act.

VII

That defendant S. D. Bennett is the duly appointed United States Attorney for the Eastern District of Texas.

VIII

That defendant A. D. Ryan is demanding reports from complainant producers under Regulations IV and from complainant refiners under Regulations V and is demanding the right to inspect complainants' books and records under Regulations VII issued by the Secretary of the Interior, all of which Regulations were issued under authority of the National Industrial Recovery Act, for the purported reason of enforcing Section 9 (c) of said Act, and all defendants are threatening to prosecute or to cause complainants to be prosecuted for failure to make such reports and permit such inspection of books and records.

IX

Regulations IV, V and VII adopted under the National Industrial Recovery Act have no fair or reasonable rela- [fol. 167] tion to the purposes of Section 9 (c) of said Act.

X

That defendants have continually entered upon the premises of complainants without permission of complainants and have attempted to examine complainants' books and records relating to production, and have attempted to gauge their tanks and inspect their property, all of which acts the defendants assert are authorized by said Section 9 (c) of the National Industrial Recovery Act, and the Regulations issued under said Act, that certain respondents incident to such visitations have dug up and destroyed certain property about complainants premises.

XI

That defendants have threatened and are attempting to enforce against complainants criminal prosecution by reason of complainants' failure and refusal to make and file the reports prescribed by Regulations IV and V, and submit their books and records to inspection as provided by Regulation VII.

Wherefore, the premises considered, the Court finds the following conclusions of law:

I

That the Secretary of the Interior is not an indispensable party to the cause of action asserted against the defendant A. D. Ryan.

II

Regulations IV, V, and VII, and all other rules and regulations issued by the Secretary of the Interior under [fol. 168] the National Industrial Recovery Act, are invalid, illegal, unconstitutional and not authorized by Title I of the National Industrial Recovery Act, insofar as the same apply to the production of petroleum or the refining and storage thereof, or the transportation of petroleum or the products thereof in intrastate commerce.

III

That defendant A. D. Ryan has been acting and intends to continue to act beyond the scope of his authority under Title I of the National Industrial Recovery Act, in entering upon the properties of the complainants.

IV

That defendants are without authority to prosecute or to threaten to prosecute the complainants under the National Industrial Recovery Act, even though complainants may fail and omit to file the reports required by Regulations IV and V, or to keep and maintain for inspection books and records as required by Regulation VII.

V

That the National Industrial Recovery Act or the rules and regulations promulgated thereunder do not authorize the defendants, their servants, agents and employees, or any one else purporting to act under the same to go upon or about the premises of the complainants herein or in anywise interfere with or molest them in the conduct of their business.

VI

That defendants by the above described acts are causing and unless restrained will continue to cause irreparable injury to the complainants.

[fol. 169] To the foregoing findings of fact and conclusions of law, the said defendants and each of them in open Court duly excepted.

Done this the 16th day of March, A. D. 1934.

Randolph Bryant, United States District Judge.

[File endorsement omitted.]

In United States District Court

Notice of Intention to Appeal—Filed March 17, 1934

A. D. Ryan, S. D. Bennett, and Phil E. Baer, defendants in the above entitled cause, hereby serve notice upon the complainants herein through their attorney of record of their intention to appeal to the United States Circuit Court of Appeals, Fifth Circuit, from the decree entered herein on the 21st day of February, A. D. 1934.

Chas. I. Francis, Attorney for Defendants.

Due and personal service of copy of the above notice of appeal is admitted this the 15th day of March, A. D. 1934.

F. W. Fischer, Attorney for Complainants.

[fol. 170] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL AND STAY OF INJUNCTION—Filed March 26, 1934

To the Honorable Randolph Bryant, Judge of said Court:

A. D. Ryan, S. D. Bennett, and J. Howard Marshall, your petitioners, respectfully show:

1. Petitioners are the defendants in the above-entitled cause.

2. On the 21st day of February, 1934, a final decree was entered in said cause against petitioners in the Tyler Division of the Eastern District of Texas.

3. Your petitioners consider themselves aggrieved by the decree aforesaid and believe there are manifest errors which are set forth in detail in the Assignment of Errors filed herewith and that an appeal may be taken by them from this Honorable Court to the Circuit Court of Appeals for the Fifth Circuit.

4. Unless this Honorable Court grants your petitioners a stay of said injunction pending disposition of the appeal herein to the Circuit Court of Appeals there will be grave and irreparable injury and damage done to your petitioners and to the many producers and refiners of petroleum and the products thereof throughout the State of Texas and [fol. 171] elsewhere within the United States, and to the Secretary of the Interior in his efforts to administer the National Industrial Recovery Act and the Code of Fair Competition for the Petroleum Industry.

5. Your petitioners, and each of them, are employes of departments of the United States Government and have been directed to prosecute appeal herein by said departments and, therefore, said appeal should be allowed without bond, obligation, or other security being required of them, as provided in Section 870, Title 28, United States Code.

Wherefore, your petitioners pray that an order be made allowing them to appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit sitting at New Orleans, Louisiana; and that an order staying the injunction decreed be entered and the decree in all things be super-

seded pending said appeal; that no bond, obligation, or other security be required of them in connection with said appeal or stay, that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which the decree was rendered, duly authenticated, be sent to the said Circuit Court of Appeals.

J. Howard Marshall, Charles Fahy, Chas. I. Francis,
Attorneys for Appellants.

[File endorsement omitted.]

[fol. 172] In United States District Court

Assignment of Errors—Filed March 26, 1934

Come now A. D. Ryan, S. D. Bennett and J. Howard Marshall, defendants in the above-entitled cause, and file the following joint Assignment of Errors upon which they will rely upon the prosecution of an appeal herewith petitioned for in said cause from the decree of this Court granting a perpetual and permanent injunction entered on the 21st day of February, 1934.

1

The Court erred in refusing to dismiss the Bills of Complaint against the defendant, A. D. Ryan, in that the Court was without jurisdiction to entertain said cause as to him, because of the absence in said cause of an indispensable party defendant, to-wit: Harold L. Ickes, Secretary of the Department of the Interior.

2

The Court erred in refusing to dismiss the Bills of Complaint against all of the defendants.

3

The Court erred in holding that Regulation IV is unauthorized by the National Industrial Recovery Act as not reasonable and necessary to enforce Section 9 (c) of said Act, and is illegal.

4

The Court erred in holding that Regulation IV is invalid and unconstitutional.

[fol. 173] 5

The Court erred in holding that Regulation V is unauthorized by the National Industrial Recovery Act as not reasonable and necessary to enforce Section 9 (c) of said Act, and is illegal.

6

The Court erred in holding that Regulation V is invalid and unconstitutional.

7

The Court erred in holding Regulation VII is unauthorized by the National Industrial Recovery Act as not reasonable and necessary to enforce Section 9 (c) of said Act, and is illegal.

8

The Court erred in holding that Regulation VII is invalid and unconstitutional.

9

The Court erred in holding the defendants are unauthorized by the National Industrial Recovery Act to go upon the property of the complainants for the purpose of inspecting books and records and further doing such acts as are reasonably necessary in inspecting such property, gauging tanks, and examining pipes and pipe connections, as not reasonable nor necessary for the enforcement of Section 9 (c) of the National Industrial Recovery Act.

10

The Court erred in failing to hold that, in authorizing the acts set forth in Paragraph 9 above, Section 9 (c) of the [fol. 174] National Industrial Recovery Act is valid and constitutional.

11

The Court erred in holding that the defendants are without authority to prosecute, or to cause to be prosecuted, the complainants under the National Industrial Recovery Act for the failure to file the reports required by Regulations IV and V or to keep and maintain for inspection books and records as required by Regulation VII.

12

The Court erred in granting a permanent injunction against the defendants.

13

The Court erred in finding the actions of the defendants are causing and, unless restrained, will continue to cause irreparable injury to complainants.

14

The Court erred in entering the decree granting a permanent injunction in that said decree is so vague, indefinite and uncertain that defendants are prevented from doing many acts which the Court has not held to be unlawful.

15

The Court erred in entering the decree granting a permanent injunction in that it is impossible for defendants and their agents to determine therefrom what is intrastate commerce within the meaning of the decree.

[fol. 175]

16

The Court erred in permanently enjoining and restraining defendants from enforcing any Rule and Regulation promulgated by the Secretary of the Department of the Interior or other designated agents under the National Industrial Recovery Act insofar as same applies to the production of petroleum in that said production affects interstate commerce, the support of an army and the maintenance of a navy.

17

The Court erred in permanently enjoining and restraining defendants from enforcing any Rule or Regulation promulgated by the Secretary of the Department of the Interior or other designated agents under the National Industrial Recovery Act insofar as same applies to the refining of petroleum, in that said refining affects interstate commerce, the support of an army and the maintenance of a navy.

18

The Court erred in permanently enjoining and restraining defendants from enforcing any Rule or Regulation promulgated by the Secretary of the Department of the Interior or other designated agents under the National Industrial Recovery Act insofar as same applies to the storage of petroleum or the products thereof in that said storage affects interstate commerce, the support of an army and the maintenance of a navy.

19

The Court erred in permanently enjoining and restraining defendants from enforcing any Rule or Regulation promulgated by the Secretary of the Department of the Inte-
[fol. 176] rior or other designated agents under the National Industrial Recovery Act insofar as same applies to the transportation of petroleum or the products thereof in intrastate commerce in that said transportation affects interstate commerce, the support of an army and the maintenance of a navy.

20

The Court erred in permanently enjoining and restraining the defendants in the enforcement of "any" Rule or Regulation promulgated by the Secretary of the Department of the Interior or other designated agents under the National Industrial Recovery Act in that all of the matters covered by the Rules and Regulations promulgated under the authority of said Act are not raised by the issues joined by the pleading herein.

21

The Court erred in entering the decree herein perpetually restraining and enjoining the defendants, their servants, agents and employees, and anyone else purporting to act under the authority of the National Industrial Recovery Act or any Rule or Regulation promulgated thereunder from going upon or about the premises of the complainants or in any wise interfering with them in the conduct of complainants' business, by reason of the provisions of the National Industrial Recovery Act or Regulations promulgated thereunder, in that the said decree and injunc-

tive relief are not limited to the doing of all of said things in connection with intrastate commerce.

22

The Court erred in entering the decree and permanently enjoining the defendants herein from going upon or about [fol. 177] complainants' premises in that the term "going upon or about" and "premises" are too vague, indefinite and uncertain.

23

The Court erred in entering the decree and permanently enjoining the defendants herein from going upon or about complainants' premises in that the premises of said complainants are not fully shown in complainants' Amended Bill of Complaint or any other pleading filed herein as to extent, description and location of the same.

24

The Court erred in holding that transactions of the complainant refiners, except as to that portion of the refined products of crude oil that they sell and have transported to other states, are not transactions in or directly affecting interstate commerce.

25

The Court erred in holding that the transactions of the complainant producers in connection with the production of crude oil are not transactions in or directly affecting interstate commerce.

26

The Court erred in holding that the production, purchase and sale of petroleum and the products thereof, wholly within the State of Texas, are not transactions directly affecting interstate commerce in such commodities.

27

The Court erred in failing to hold, as a matter of fact, that eighty-five per cent of the crude oil produced in the East Texas Field and of the products thereof are com- [fol. 178] mingled with, or move in, or enter the stream of interstate commerce.

28

The Court erred in failing to hold that the production of crude oil in excess of the amount allocated by a valid state order, and the refining, storing and transportation thereof, demoralizes the interstate market for petroleum and its products on a nation-wide scale, and disrupts the natural channels of interstate commerce in petroleum and the products thereof.

29

The Court erred in failing to hold that the production of crude oil in excess of the amount allocated by a valid State order results in a depletion of the supply of oil necessary to the movement of interstate commerce and to the support of an army and the maintenance of a navy.

30

The Court erred in failing to hold that the preservation of the nation's petroleum resources is essential to the national defense and to the support of an army and the maintenance of a navy.

31

The Court erred in failing to hold that a national emergency exists in industry generally and specially in the Petroleum Industry.

32

The Court erred in finding the defendants have destroyed certain property of the complainants.

Wherefore, defendants pray that said decree be reversed, [fol. 179] said injunction be dissolved and for such other and further relief as to the Court may seem just and proper.

Dated this the 26th day of March, A. D., 1934.

J. Howard Marshall, Charles Fahy, Chas. I. Francis, Attorneys for Defendants.

[File endorsement omitted.]

In United States District Court

Order Allowing Appeal—Filed March 26, 1934

Upon petition of the defendants A. D. Ryan, S. D. Bennett and J. Howard Marshall and it appearing to the Court that the appeal herein is being prosecuted pursuant to the direction of the Solicitor General of the United States and the Department of Justice, it is hereby ordered as follows:

1. That an appeal without bond is hereby allowed in the above-entitled cause to said defendants A. D. Ryan, S. D. Bennett and J. Howard Marshall to the United States Circuit Court of Appeals for the Fifth Circuit for the final decree heretofore entered in said cause on the 21st day of February, A. D., 1934, granting a perpetual and permanent injunction.

2. That the perpetual and permanent injunction issued under the authority of said decree not be stayed.

[fols. 180 & 181] 3. That a citation be issued directed to the complainants herein to be and appear in the United States Circuit Court of Appeals for the Fifth Circuit sitting at New Orleans, Louisiana, within thirty days from the day of taking said appeal as required by law.

4. That the Clerk of this Court transcribe, certify and transmit to the said United States Circuit Court of Appeals for the Fifth Circuit, a true and complete transcript of the record and all other proceedings in this cause as required by law.

Done and ordered at Beaumont, Texas, this 26th day of March, A. D., 1934.

Randolph Bryant, Judge of the United States District Court in and for the Eastern District of Texas.

[File endorsement omitted.]

Citation in usual form showing service on F. W. Fischer, filed March 26, 1934, omitted in printing.

[fol. 182] IN UNITED STATES DISTRICT COURT

CERTIFICATE OF DIRECTION TO APPEAL—Filed March 26, 1934

Elijah Crippen, being first duly sworn, deposes and says:

I hereby certify that I am an officer working under the Attorney General of the United States in the Department of Justice, with the title of "Special Assistant to the Attorney General."

I hereby further certify that the Solicitor General of the United States and the Department of Justice have authorized and directed the following defendants, namely, A. D. Ryan, S. D. Bennett, and J. Howard Marshall, to take an appeal in said cause from the decree of this Court granting a permanent injunction, and to apply for an order staying and superseding said permanent injunction.

Elijah Crippen.

[fol. 183] Subscribed and sworn to before me this 24th day of March, A. D., 1934. Mrs. H. I. Griffies, Notary Public in and for Smith County, Texas. My commission expires June 1, 1935. (Seal.)

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

STIPULATION AS TO CONTENTS OF TRANSCRIPT OF RECORD—Filed April 2, 1934

It is hereby stipulated and agreed by and between the attorneys for the respective parties that the transcript of record to be filed in the United States Circuit Court of Appeals for the Fifth Circuit pursuant to the appeal heretofore allowed herein, shall include the following:

1. Caption.
2. Amended Bill of Complaint and Exhibits attached thereto.
3. Answer of defendants to Amended Bill of Complaint.
4. Stipulation of all parties on pleading.

[fol. 184] 5. Statement of the evidence and Waiver of Notice.

6. The Decree.

7. Motion for Filing Findings of Fact and Conclusions of Law.

8. Findings of Fact and Conclusions of Law.

9. Notice of Intention to Appeal.

10. Petition for Appeal and Stay of Injunction.

11. Assignment of Errors.

12. Order Allowing Appeal without Bond.

13. Citation on Appeal and Acceptance of Service thereof.

14. Certificate of Direction to Appeal.

15. Notice of Election for Printing Record.

16. Stipulation as to Contents of Transcript of Record.

17. Clerk's Certificate.

J. Howard Marshall, Charles Fahy, Chas. I. Francis, Attorneys for Defendants and Appellants. F. W. Fischer, Attorney for Plaintiffs and Appellees.

[File endorsement omitted.]

[fol. 185] IN UNITED STATES DISTRICT COURT

NOTICE OF ELECTION FOR PRINTING RECORD—Filed April 2, 1934

A. D. Ryan, S. D. Bennett and J. Howard Marshall, appellants in the above cause, hereby give notice of their election to take and file in the Circuit Court of Appeals for the Fifth Circuit to be printed under the supervision of its Clerk a transcript of the record herein.

This the 2 day of April, A. D., 1934.

Chas. I. Francis, Attorney for Appellants.

[File endorsement omitted.]

[fol. 186] IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, TYLER DIVISION

No. 652. Equity

AMAZON PETROLEUM CORPORATION et al., Complainants,

v.

RAILROAD COMMISSION OF TEXAS et al., Respondents

No. 635. Equity

PANAMA REFINING COMPANY et al., Complainants,

v.

A. D. RYAN et al., Respondents, and Cases Consolidated Therewith

OPINION OF THE COURT—Filed Feb. 12, 1934

BRYANT, District Judge:

In these related cases complainants attack the validity of an Act of Congress known as the National Industrial Recovery Act, and certain regulations of the Secretary of the Interior, the provisions of the Code for the petroleum industry established under the Act, upon constitutional grounds.

In the Anding and Panama Refining Company cases a rule to show cause was issued returnable October 2, calling upon the respondents, Ryan, et al., to show cause why a preliminary injunction should not be granted as prayed. On the hearing upon this rule, and the respondent's answer [fol. 187] thereto, the rule was discharged and the application for preliminary injunction denied. The cause was thereupon set for final hearing upon November 6th. Shortly thereafter, a similar attack was made upon the statute and the regulations by the complainants in the other cases listed above, in which the individual members of the Railroad Commission of Texas, their agents, the Attorney General of Texas, and various district and county attorneys of the State were made respondents, and in which the complainants invoking the Fourteenth Amendment, sought injunctive relief, interlocutory and final, to restrain en-

forcement against them of certain orders of the Railroad Commission limiting their production of oil.

It appearing that the latter cause of action presented a case for three judges, a statutory court was ordered assembled to pass upon the constitutional question raised.

The statutory court in limine suggested its want of jurisdiction over the cause of action against the Federal respondents as not within Section 380, and decided that such cause of action was for the consideration of the District Judge alone.

All parties desiring the application to be heard and determined as to both causes of action, it was in open court stated and agreed to by all parties, and the judges consenting, made matter of record, that each cause should be regarded as submitted to and to be decided by the tribunal having jurisdiction of it. It was further stipulated of record in the latter suits filed, that the suits be submitted on the evidence taken at such hearing, both on the application for interlocutory injunction and on the merits.

The pertinent portions of the Act of Congress involved are as follows:

[fol. 188] "An Act to encourage national industrial recovery, to foster fair competition and to provide for the construction of certain useful public works, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Title I—Industrial Recovery

Declaration of Policy

Section 1. A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living, of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organi-

zation of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards [fol. 189] of labor, and otherwise to rehabilitate industry and to conserve natural resources.

Administrative Agencies

Section 2. (a) To effectuate the policy of this title, the President is hereby authorized to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint, without regard to the provisions of the civil service laws, such officers and employees, and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed.

(b) The President may delegate any of his functions and powers under this title to such officers, agents, and employees as he may designate or appoint, and may establish an industrial planning and research agency to aid in carrying out his functions under this title.

(c) This title shall cease to be in effect and any agencies established hereunder shall cease to exist at the expiration of two years after the date of enactment of this Act, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

Codes of Fair Competition

Sec. 3. (a) Upon the application to the President by one or more trade or industrial associations or groups, the [fol. 190] President may approve a code or codes of fair

competition for the trade of industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: Provided, That such code or codes shall not permit monopolies or monopolistic practices: Provided, further, That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or code-. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared.

(b) After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any transac- [fol. 191] tion in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended: but nothing in this title shall be mission under such Act, as amended.

(c) The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of any code of fair competition approved under this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations.

(d) Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public notice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade, or industry or subdivision thereof, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of this section.

(f) When a code of fair competition has been approved or prescribed by the President under this title, any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a misde-
[fol. 192] meanor and upon conviction thereof an offender shall be fined not more than $500 for each offense, and each day such violation continues shall be deemed a separate offense.

Oil Regulation

Sec. 9 (a) The President is further authorized to initiate before the Interstate Commerce Commission proceedings necessary to prescribe regulations to control the operations of oil pipe lines and to fix reasonable, compensatory rates for the transportation of petroleum and its products by pipe lines, and the Interstate Commerce Commission shall grant preference to the hearings and determination of such cases.

(b) The President is authorized to institute proceedings to divorce from any holding company any pipe-line company controlled by such holding company which pipe-line [illegible] by unfair practices or by exorbitant rates in the transportation of petroleum or its products tends to create a monopoly.

(c) The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State.

Any violation of any order of the President issued under the provisions of this subsection shall be punishable by fine of not to exceed $1,000, or imprisonment for not to exceed six months, or both.

[fol. 193] Rules and Regulations

Sec. 10. (a) The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and fees for licenses and for filing codes of fair competition and agreements, and any violation of any such rule or regulation shall be punishable by fine of not to exceed $500, or imprisonment for not to exceed six months, or both.

(b) The President may from time to time cancel, or modify any order, approval, license, rule, or regulation issued under this title; and each agreement, code of fair competition, or license approved, prescribed or issued under this title shall contain an express provision to that effect."

The President, pursuant to the claim of power granted to him by said Section 9 (c), issued an Executive Order prohibiting the transportation in interstate and foreign commerce of all petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any board, commission, officer or other duly authorized agency of the State.

The President duly delegated to the Secretary of the Interior his power and functions by Executive Order and authorized the Secretary of the Interior to make all necessary or desirable rules or regulations.

Thereafter, the Secretary of the Interior issued rules and regulations purporting to effectuate said Executive Order and Section 9 (c) of the Act. It is paragraph 4 [fol. 194] and 5 of these rules and regulations which are attacked in the present suits and they provide substantially as follows: Regulation 4 requires each producer of petroleum to file a statement under oath not later than the 15th day of each month with the Division of Investigations of the Department of Interior, giving (1) the residence and post office address of the producer; (2) the location of his producing properties and wells, the allowable production

therefor as fixed by the State agency; (3) the daily production in barrels; (4) details of deliveries of petroleum and the amount in storage at the beginning and end of the month; and (5) a declaration that no part of the petroleum or products thereof produced and shipped has been produced or withdrawn in violation of State law or valid regulation.

Regulation 5 requires every refiner to file a statement not later than the 15th of each month, with said division of Investigations, containing the following information: (1) the residence and post office address of the refiner; (2) the place and date of receipt, with names and business addresses of the producers or parties from whom the petroleum was received, the amount received, and the amount held in storage on the last day of the calendar month preceding the period covered by the report; (3) details as to the disposition of said petroleum and the amount held in storage or otherwise at the end of said calendar month; (4) a declaration that to the best of the information and belief of the affiant, none of the petroleum received or disposed of, was produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by State law or valid regulation.

The Code of Fair Competition, as provided for in Section 3 (a) of the Act, as it relates to the petroleum industry, provides among other things as follows:

[fol. 195] (a) That complainants and other producers engaged in the producing of oil shall pay their employees not less than a specified wage;

(b) Shall not work their employees in excess of a specified number of hours per day;

(c) That all employees engaged in similar work shall work the same number of hours, and be paid at least a specified wage, the hours of service and rates of pay being subject to change by the President;

(d) That complainants, and all persons subject to the code, shall insert in all contracts made by them for work to be done in the industry, whereby the contractor shall agree that all of his employees, and all employees of any subcontractor shall be paid the rates prescribed by said code, and that the schedule of hours of all such employees conform to these prescribed by said code;

(e) That complainants, and other members of said industry, shall not, as a condition of employment, require any employee or anyone seeking employment to join any union or refrain from joining any union or labor organization;

(f) That complainants, and other oil producers be prohibited from storing oil or withdrawing oil from storage without the consent and approval of a planning and coordinating Committee appointed by the President;

(g) That not in excess of 100,000 barrels of oil shall be withdrawn from storage in the United States on any day;

(h) That required production of oil to balance consumer [fol. 196] demand for petroleum products shall be estimated by a Federal agency designated by the President; that allocation of such requirements shall be made among the states, and no state shall be permitted to produce in excess of such allocation, all allocations to be approved by the President.

The general claim of complainants as against respondents is substantially as follows: that the complainants (producers) are not engaged in shipping any oil either intrastate or interstate, but are engaged solely in the business of producing and marketing oil. The oil is sold by them on their respective leases and title to such oil passes from complainants upon its being delivered to buyers on the premises where it is being produced. They further claim that the respondents are purporting to act under authority conferred by the National Recovery Act, the Executive Order above referred to, and that the President, assuming to act in his official capacity but without any authority whatever, approved and promulgated what is known as the Code of Fair Competition for the Petroleum Industry, and that by the Executive Order referred to, he attempted to delegate to the Secretary of the Interior full power and authority to enforce and carry into effect the provisions of the National Recovery Act relating to the Petroleum Industry. That the respondents are attempting to enforce the aforesaid code and orders as against these complainants and as an incident to such enforcement are demanding of and compelling complainants to furnish them with reports required by the regulations referred to above, and that as

an incident to the enforcement of such demand, they make repeated inspections of complainants' properties and gauge their tanks to ascertain the amount of oil being produced by them. That certain respondents, incident to such visita-
[fol. 197] tions have dug up and destroyed certain property about complainants' premises, and will in the future continue to assert such rights of visitation and inspection and invasion of complainants' property rights unless restrained from so doing; that the Federal officers have stated that if the complainants do not comply with said orders and regulations and provisions of the code, they will cause them to be arrested and prosecuted under Section 9 (c) of the National Recovery Act, and that unless restrained said Federal officers will institute and prosecute actions, both civil and criminal against the complainants, which will result in irreparable injury and damage to complainants, for which they have no adequate remedy at law.

The only difference in the case made as to the refiners is that they are engaged exclusively in the production and manufacture of products from crude petroleum; that they are not engaged in interstate commerce and that none of their products when sold by them go into the channels of interstate commerce.

The evidence is without contradiction that the complainants in this case are not actually engaged in interstate commerce.

The claim is made that the provisions of the National Recovery Act, code and regulations, are null and void because:

(a) It is an attempt by Congress to delegate its legislative powers to the President.

(b) It is an attempt by Congress to vest in the President the powers of a supreme dictator, contrary to the National Constitution, and contrary to our Republican form of government.

[fol. 198] (c) It authorizes the President to exercise police powers not granted to the National Government by the several states of the Union, and is in violation of the 10th Amendment to the National Constitution.

(d) It deprives complainants of their natural and inherent rights contrary to the 9th Amendment to the National Constitution.

(e) It deprives complainants of their property without due process of law, in violation of the 5th Amendment to the National Constitution.

(f) It violates both the 4th and 5th Amendments to the National Constitution, in that it attempts to give the Federal Government the right to compel the complainants and others to produce their papers and effects, compels them to give evidence against themselves, and deprives them of liberty and property without due process of law.

(g) It is contrary to the 7th Amendment to the National Constitution in that it imposes excessive fines and cruel and unusual punishment.

To this claim of right by complainants, respondents answer by saying in general that under a declared emergency the powers of Congress are expanded beyond their extent under ordinary circumstances, and in ordinary times, and that under the commerce clause, the Federal Government has the power to control the production of petroleum, and that while ordinarily the production of oil or refining thereof is not interstate commerce, that this may so affect interstate commerce so as to come within the regulatory power of Congress. That the Act does not constitute an unlawful delegation of legislative power and is valid. [fol. 199] The majority opinion this day filed has adjudged that the orders of the Railroad Commission of Texas are valid.

For the purposes of this opinion, it may be conceded that Congress may prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted. The further exceedingly doubtful concession may be made that the Act does not delegate legislative power and authority to the President so that the essential point for decision is as to the validity of the regulations issued by the Secretary of the Interior and the provisions of the code and their binding effect, if any, upon the complainants, under the facts disclosed in this matter.

The above concessions and assumptions are indulged because I have reached the conclusion that the regulations and the code provisions involved have no constitutional basis as applied to the facts of this case.

This is another of those cases which have so frequently engaged the attention of the national courts involving as it essentially does a contest between state and Federal authority and more particularly the extent to which the Federal Government may go in its exercise of authority in regulation of matters ordinarily committed to the regulation of the States.

Owing to the apparent importance of the matter, a statement of my reasons for the conclusion reached is deemed proper.

It has been decided specifically and unequivocally by the Supreme Court that mining is not interstate commerce and the power of Congress does not extend to its regulation as such. United Mine Workers of America v. Coronado [fol. 200] Coal Company, 259 U. S. 407. Champlin Refining Co. v. Corp. Comm., 286 U. S. 210.

As said by the Supreme Court in Oliver Iron Mining Co. v. Lord, 262 U. S. 171, 178: "Mining is not interstate commerce but like manufacturing is a local business subject to local regulation and taxation. Its character in this regard is intrinsic, is not affected by the intended use or disposal of the product, is not controlled by contractual engagements and persists even though the business be conducted in close connection with interstate commerce."

The decisions of the Supreme Court further show that the making or manufacturing of goods are not commerce nor does the fact that these things are to be afterward shipped or used in interstate commerce make their production a part thereof. Hammer v. Dagenhart, 247 U. S. 251, 272.

The Supreme Court said in the famous Child Labor case: "The control by Congress over interstate commerce cannot authorize the exercise of authority not entrusted to it by the Constitution. Pipeline cases, 243 U. S. 548, 560. The maintenance of the authority of a State over matters purely local is as essential to the preservation of our existence as is the conservation of the supremacy of the Federal power in all matters entrusted to the nation by the Federal Constitution. In interpreting the Constitution it must never be forgotten that the nation is made up of States to which are entrusted the powers of local government. And to them and to the people the powers not expressly delegated to the national government are reserved.

Lane County v. Oregon, 7 Wall. 71, 76. The power of the States to regulate their purely internal affairs by such laws as seem wise is inherent and has never been surrendered to the general government * * * This court has no more [fol. 201] important function than that which devolves upon it the obligation to preserve inviolate the constitutional limitations upon the exercise of authority, federal and State, to the end that each may continue to discharge harmoniously with the other the duties entrusted to it by the Constitution."

As said in Ohio Oil Company v. Indiana, 177 U. S. 190, 211, 212: "In view of the fact that regulations of natural deposits of oil and gas and the right of the owner to take them as an incident of title in fee to the surface of the earth, as said by the Supreme Court of Indiana, is ultimately but the regulation of real property and they must hence be treated as relating to the preservation and protection of rights of an essentially local character."

In the case of Kidd v. Pearson, 128 U. S. 1, the Supreme Court in discussing the extent of the authority of the Federal government under the commerce clause, among other things said: "The line which separates the province of Federal authority or the regulation of commerce from the powers reserved to the States has engaged the attention of this court in a great number and variety of cases. The decisions in these cases, though they do not in a single instance assume to trace that line throughout its entire extent or to state any rule further than to locate the line in each particular case as it arises, have almost uniformly adhered to the fundamental principle which Chief Justice Marshall in the case of Gibbons v. Ogden, 9 Wheat 1, laid down as the nature and extent of the grant of power to Congress on this subject and also the limitations, expressed and implied, which it imposes upon State legislation with regard to taxation, to the control of domestic commerce and to all persons and things within its limits of purely internal concern * * * no distinction is more familiar to the common mind [fol. 202] nor more clearly expressed in political literature than that between manufacture and commerce. Manufacture is transformation, the fashioning of raw materials into a change of form for use; the functions are different; the buying and selling and the transportation incident thereto constitutes commerce and the regulation of commerce in a

constitutional sense embraces the regulation at least of such transportation. Commerce with foreign countries and among the states strictly considered consists in intercourse and traffic, including in its terms navigation and the transportation and transit of persons and property as well as the purchase, sale and exchange of commodities. If it be held that the term includes the regulation of all such manufactures as were intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested to the exclusion of the States with a power to regulate not only manufacturers, but also agriculture, horticulture, stockraising, domestic fishing, mining * * *, in short, every branch of human industry, * * * It was said by Chief Justice Marshall 'that it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the several states was to insure uniformity of regulations against conflicting and discriminating State legislation.' "

The Supreme Court again in the case of County of Mobile v. Kimball, 102 U. S. 692, laid down the rule as to the constitutional limitations of Congress under the commerce clause in which it held that the power of Congress to regulate interstate commerce is unlimited, but that in regulating commerce between the State and foreign countries the regulations must be uniform and of one system or plan. The [fol. 203] reason is obvious, being so that no discrimination would occur by reason of such legislation.

In the case at bar the regulations sought to be enforced against the complainants apply only to the East Texas and the Oklahoma City oil fields, showing conclusively that they are not intended or meant to be regulations of commerce in a constitutional sense, but merely an attempt upon the part of the Federal government to limit the production of oil from these two fields, and to control the manufacture thereof, essentially matters of State regulation.

It may be argued that the purpose of these statutes as set forth in the declarations of emergency, and of policy by Congress are much broader than the commerce power

of Congress and that these purposes of national rehabilitation are sought to be accomplished through a variety of effort of mutual and voluntary agreement which carry no penalties and also by a variety of mere money spending activities of the Federal government particularly in the aid of agriculture.

It is nevertheless true however, that in those provisions in which the government exhibits the heavy hand of authority to control or to compel a surrender of individual right and individual initiative in the fields of agriculture and of industries with pains and penalties, the statutes themselves in their very terms base the power to enforce upon the commerce clause. In this respect the intention of Congress has been made clear.

This conclusion finds support in the legislative history of this Act. Senator Wagner of New York, who was largely instrumental in the formulation and drafting of this legislation, said: "I have been discussing codes which are voluntary both as to their competitive practices and as to their [fol. 204] labor provisions, and it is primarily upon such spontaneous action that the bill relies. It is not my intention to substitute government for business, or to remove from the shoulders of business men the responsibility for economic recovery. The duties of industrialists are enhanced by the opportunities which the bill offers for constructive cooperation." Again, in the same address, he said: "The question of the proper exercise of Federal authority depends upon whether the bill confines itself to national matters or whether it attempts to extend to matters which are of purely local concern. The answer is clear. The language of the bill expressly provides that any compulsory measures such as the licensing feature of the bill, and any penalties for violation of the codes *shall be confined to business in or affecting interstate commerce. Thus no attempt is made to extend Federal action to an area of activity not covered by the commerce clause of the Constitution.*"

Legislative intent is made plain when the statute, after making provision for the codes and providing that said codes shall be the standards of fair competition says: "Any violation of such standards *in any transaction in or affecting interstate or foreign commerce* shall be deemed an unfair method" etc. Section 3 (b).

It is a matter of common knowledge that the provisions of the codes do not stop with interstate commerce or with those trades or industries that are interstate in character. There is no pretense of such limitation. To bring such transactions within the constitutional regulatory power of Congress enforceable under penalty of the law, it is necessary to consider that Congress may under the power to regulate interstate and foreign commerce reach back into the states and control without limit the source of produc- [fol. 205] tion and manufacturing processes, dictate the hours of labor, wages to be paid, the conditions of employment and the relations of employer and employee.

That such was not the intent of Congress except as it related to interstate transactions in fact is thus made clear.

It being made clear from the evidence in this case that complainants have not subscribed to such code and are not engaged in interstate commerce, they are not subject to the pains and penalties provided by the Act for violation of such code, because they are clearly not engaged "in any transaction in or affecting interstate or foreign commerce."

To sustain a pretension to powers so vast and so unprecedented and so unheard of should certainly find its basis in the clearest expression of intent upon the part of Congress. Under the plain terms of the Act the expression of intent is to the contrary.

The power to regulate commerce between the states is without question one of the full, complete and plenary powers of Congress. As was said by the Supreme Court in the case of Houston Texas Railroad v. United States, 234 U. S. 342, "It is unnecessary to repeat what has frequently been said by this court with respect to the complete and paramount character of the power confided to Congress to regulate commerce among the several states. It is of the essence of this power that where it exists it dominates. Interstate trade was not left to be destroyed or impeded by the rivalries of local government. The purpose was to make impossible the recurrence of the evils which had overwhelmed the confederation and to provide the necessary basis of national unity by insuring uniformity of regulation against the conflicting and discriminating state legislation. By virtue of the comprehensive terms of [fol. 206] the grant, the authority of Congress is at all times adequate to meet the varying exigencies that arise

and to protect the national interest by securing the freedom of interstate commercial intercourse from local control. Gibbons v. Ogden, 9 Wheat 1, 196, 224; Brown v. Maryland, 12 Wheat 419, 446; County of Mobile v. Kimball, 102 U. S. 691, 696, 697; Smith v. Alabama, 124 U. S. 45, 473; Second Employers Liability Cases, 223 U. S. 1, 47, 53, 54; Minnesota Rate Cases, 230 U. S. 352, 398, 399.

It would neither be instructive nor profitable to undertake to review the numerous cases in which the Supreme Court has upheld the exercise of this power. It may simply be admitted that they go the full length in sustaining legislation by Congress in regulating local conditions or activities which have the effect of directly interfering with interstate commerce so as to be an obstruction or burden thereon.

In Board of Trade v. Olsen, 262 U. S. 1, where the Grain Futures Act was involved, it was held that "whatever amounts to more or less constant practice and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it. This court will certainly not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly non-existent."

Here Congress has not declared any local activity or condition as constituting a burden upon interstate commerce. As is said in United States v. Ferger, 260 U. S. 199: "It follows that sales for future delivery on the Board of Trade [fol. 207] are not in and of themselves interstate commerce. They cannot come within the regulatory power of Congress as such *unless they are regarded by Congress from the evidence before it as directly interfering with interstate commerce so as to be an obstruction or burden thereon.*"

As was further said in the Olsen case: "In the Act we are considering Congress has expressly declared that transactions and prices of grain in dealing in futures are susceptible to speculation, manipulation and control which are detrimental to the producer and consumer and persons handling grain in interstate commerce and render imperative for the protection of such commerce and the national public interest therein."

Here there is no such expression of judgment finding or will by Congress. There is not here shown any entry by Congress either directly or through its agency into the exclusive province of the State in dealing with intrastate activities except where those engaged in purely intrastate activities consent to the provisions of the code by subscribing thereto, which is not the case here.

There is not perceived in the terms of this Act any intention, express or implied, by Congress to invade the sphere of purely local action in aid of or to remove burdens or restrictions upon interstate commerce. In such connection it is interesting to note the observations of the present Chief Justice in an argument before the Federal Oil Comservation Board in 1926, when he was speaking in the capacity as counsel for his client, The American Petroleum Institute, and wherein he quotes the language of the Supreme Court as found in the Coronado case and the Oliver Mining Company v. Lord, supra, to show that oil production is not commerce and then proceeds as follows: "It may therefore be safely taken for granted that under the [fol. 208] powers to regulate commerce Congress has no constitutional authority to control the mere production of petroleum on lands (other than Indian lands) within the territory of a State. All plans for requiring unit operation or otherwise, which involved the assertion of such a power on the part of Congress do not require discussion. They proceed from an utterly erroneous conception of Federal power. It does not further the policy of conservation to take up the public attention with futile proposals which disregard the essential principles of our system of government."

Further, he stated: "I am aware that it has been suggested that such Federal power to control production within the states might be asserted by Congress because it could be deemed to relate to the provision for the common defense and the promotion of the general welfare." (An argument made in this case in the brief of the Solicitor of the Department of Interior). The Chief Justice continuing said: "Reference is sometimes made in support of this view to the words of the preamble of the Federal Constitution. But as Story says 'The preamble never can be resorted to to enlarge the powers confided to the general government or any of its departments. It cannot confer any power per

se; it can never amount, by implication, to an enlargement of any power expressly given.'" 1 Story on the Constitution, Sec. 462. And this statement was approved by the Supreme Court of the United States in Jacobsen v. Mass. 197 U. S. 11, 22.

"The suggestion to which I have referred is an echo of an attempt to construe Article I, Section 8, subdivision 1 of the Constitution of the United States, not as a power 'to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general [fol. 209] welfare of the United States,' but as conferring upon Congress two distinct powers, to wit: (1) the power of taxation and (2) the power to provide for the common defense and the general welfare. In this view, it has been urged that Congress has the authority to exercise any power that it might think necessary or expedient for the common defense or the general welfare of the United States. Of course, under such a construction the government of the United States would at once cease to be one of enumerated powers and the powers of the states would be wholly illusory and would be at any time subject to be controlled in any matter by the dominant Federal will exercised by Congress on the ground that the general welfare might thereby be advanced. That, however, is not the accepted view of the Constitution. (1 Story on the Constitution, secs. 907, 908; 1 Willoughby on the Constitution, sec. 22.) The government of the United States is one of enumerated powers and is not at liberty to control the internal affairs of the states respectively such as production within the States, through assertion by Congress of a desire either to provide for the common defense or to promote the general welfare."

The government claims that under a declared emergency powers of Congress are expanded beyond their extent under ordinary circumstances and in ordinary times, and relies upon the cases of Highland v. Russell, 279 U. S. 253; Block v. Hirsh, 256 U. S. 135; Brown v. Feldman, 256 U. S. 170; Wilson v. New, 243 U. S. 332; Chastleton v. Sinclair, 264 U. S. 543.

In each of the above cases the action complained of was predicated upon an actual existing power of government and the emergency was only the occasion for bringing the power into exercise.

However, as has been very aptly said by the Supreme Court in the recent case of Home Building and Loan Asso- [fol. 210] ciation v. John H. Blaisdell & Wife, 290 U. S. 255, "emergency does not create power. Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved. The Constitution was adopted in a period of grave emergency. Its grants of power to the Federal government and its limitations of the powers of the States were determined in the light of emergency and they are not altered by emergency. What power was thus granted and what limitations were thus imposed are questions which have always been and always will be the subject of close examination under our constitutional system."

"While emergency does not create power emergency may furnish the occasion for the exercise of power. 'Although an emergency may not call into life a power which has never lived, nevertheless emergency may afford a reason for the exertion of a living power already enjoyed.' " Wilson v. New, 243 U. S. 348.

By Section 9 (c) the President "is authorized to prohibit the transportation *in interstate and foreign commerce* of petroleum and the products thereof, produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any state law or valid regulation or order prescribed thereunder by any board, commission, officer or other duly authorized agency of the State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable", etc.

By Section 10 (a) "The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purpose of this title."

Indulging as is indicated above, the violent presumption that Section 9 (c) is valid in the face of the complaint made [fol. 211] against it to the effect that it is an abdication by Congress of its function of legislating and an unconstitutional delegation of authority to the President of its power to legislate, the inquiry arises as to the validity of the regulations made pursuant to this provision. It might be said in passing that there cannot be perceived from this expression of Congress any expression of will or intent of its own, and that it prescribes no penalty for a violation of the Act, but that the penalty prescribed is for violation of any

orders that the President might make under the Act and that it further provides that the President may terminate the same at any time he sees fit.

Entertaining as I do the gravest misgivings, if not the absolute certainty of conviction that this provision of the Act is invalid by reason of its delegation to the Executive of legislative authority, yet conceding it for the purposes of the decision to be valid, it is obvious that the President and his agents in their rules and regulations could exercise no greater authority nor to any greater extent than that which was exercised by Congress itself. This is limited to the transportation in interstate and foreign commerce of petroleum and the products thereof, etc.

It has been repeatedly held that in order to subject one to inquisitions, visitations and interrogations by extrajudicial bodies for the purpose of obtaining information against them, statutory authority for such claim of right must be shown to plainly and definitely confer upon such bodies such authority. Overton Refining Company v. C. V. Terrell, et al., 459 in Equity in this court. Counselman v. Hitchcock, 142 U. S. 547. Interstate Commerce Commission v. Brimson, 154 U. S. 448. Harriman v. Interstate Commerce Commission, 211 U. S. 408.

[fol. 212] As there is nothing contained in the statute authorizing the action complained of on the part of the respondents, it is clear that such regulations requiring such reports and the going upon the property of the complainants by the respondents, gauging their tanks and digging up their pipelines are without authority of law.

But the respondents say that the regulations in question are: (1) reasonably necessary to carry out the purposes of the Act and (2) that they do not infringe upon constitutional rules, but there cannot be read into the Act any intention of Congress to invade the rights of the State to regulate matters of purely local concern and regulation such as the production of oil and the refined products thereof where they have no relation to and do not go into interstate commerce, and it is not competent for the Secretary of the Interior, however good his motives, to enlarge by regulation upon the provisions of the Act itself.

Since the Act in terms only authorizes the prohibition of the transportation in interstate and foreign commerce of petroleum and the products thereof; it certainly cannot be extended to cover by regulation those who are obviously

not engaged in the transportation of such products in interstate or foreign commerce or engaged at all in interstate or foreign commerce.

The other provisions of Section 9 (c) relating to transportation in interstate commerce recognize the validity of State regulations and the action of the State regulatory body in fixing the amount of withdrawals and the amount to be produced. This in itself is a denial of any intention upon the part of Congress to grant to national officers the right to act in regard to the production of crude oil or the manufacture of its products.

[fol. 213] Such action by officers of the National government is obviously an indirection and evasion contrary to the terms of the Act itself in an attempt to regulate and control the production of oil and the manufacture of products therefrom, a matter committed solely to the discretion of the State.

As was said in Stafford v. Wallace, 258 U. S. 496, where the Act gave the Secretary of Agriculture a large measure of control over the stockyards of the country and which control extended to practically all the methods of doing business therein, even to the price to be charged for the services rendered in the stockyard. The Supreme Court said: "What there amounts to more or less constant practice and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause. *And it is primarily for Congress to consider and decide the fact of the danger and meet it.* This court will certainly not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly non-existent." Here there has been not only no determination by Congress of a practice there threatens to obstruct or unduly to burden the freedom of interstate commerce except as it relates, if at all, to the transportation in interstate and foreign commerce of petroleum and its products. It has not considered and decided the fact of any other danger to or burden upon interstate commerce and the regulations of the Secretary of the Interior certainly cannot override and enlarge the determinations of Congress by mere regulation to the prejudice of the rights of the State over matters of purely local concern.

The case here is about the same as Stafford v. Wallace if, under the facts of that case the Secretary of Agriculture [fol. 214] had by regulation required that every domestic producer of livestock, engaged solely in intrastate commerce, give him information as to the kind and character, description and age, color and sex of the livestock so raised, something which obviously had no relation to the matter of local practice or condition which Congress was attempting to affect by regulation: then the situation there and here would be fairly comparable. Such a requirement would have had no reasonable relation to the expressed will of Congress and so here. The regulations of the Secretary of the Interior have no reasonable or any relation to the will of Congress expressed in this Act. To admit of the authority of the Secretary of the Interior to make such regulations as those involved here is to go in the face of the terms of the Act itself. Such an invasion of the rights of the States is not permissible in our dual form of Government.

The facts of this case clearly and obviously disclose that the regulations seek by indirection to evade constitutional limitations by superseding State authority to which the power is clearly committed to regulate the local production of crude oil and to supervise the manufacture of products therefrom.

As said in Boyd v. United States, 116 U. S. 616: "Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure.

"This can only be obviated by adhering to the rule that Constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy and leads to gradual depreciation of the right as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the Constitutional rights of the citizen and [fol. 215] against any stealthy encroachments thereon. Their motto should be obsta principiis."

As if apropos of the situation here presented, John F. Dillon, addressing himself to the constitutional provisions written for the protection of life, liberty and property, years ago said: "If there is any problem which can be said to be yet unsettled it is whether the bench of this country,

State and Federal, is able to bear the great burden of supporting under all circumstances the fundamental law against popular or supposed popular demands for enactments in conflict with it. It is the loftiest function and the most sacred duty of the judiciary * * * unique in the history of the world * * * to support, maintain and give full effect to the Constitution against every act of the legislature or the Executive in violation of it. This is the great jewel of our liberties. We must not, 'like the base Judean, throw a pearl away richer than all his tribe.' This is the final breakwater against the haste and passions of the people. Against the tumultuous ocean of Democracy. It must at all costs be maintained." Dillons Laws and Jurisprudence of England and America, page 214.

The above conclusions obviate the necessity of discussion of the other constitutional questions raised.

A decree may be presented in accordance herewith.

[File endorsement omitted.]

[fol. 216] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 217] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7351

A. D. RYAN, S. D. BENNETT, J. HOWARD MARSHALL, Appellants,

versus

PANAMA REFINING COMPANY et al., Appellees

Motion of Appellants for Supersedeas and Stay

MOTION FOR SUPERSEDEAS AND STAY AND AFFIDAVIT IN SUPPORT—Filed April 4, 1934

To the Honorables, the Justices of the United States Circuit Court of Appeals for the Fifth Circuit:

Acting pursuant to the direction of the Solicitor General of the United States and the Department of Justice, come now the above named appellants, through their attorneys, Charles Fahy, J. Howard Marshall and Chas. I. Francis, and show unto Your Honors that on the 21st day of February, 1934, the Honorable Randolph Bryant, Judge of the United States District Court for the Eastern Dis- [fol. 218] trict of Texas, entered a decree granting a permanent and perpetual injunction in a certain cause entitled Panama Refining Company et al., plaintiffs, versus A. D. Ryan et al., defendants, in Equity Cause No. 635 and Consolidated Causes Nos. 636 and 640, then pending in said Court.

The District Court, by its decree, granted a permanent and perpetual injunction enjoining and restraining A. D. Ryan, Special Agent of the Division of Investigations, Department of the Interior of the United States, S. D. Bennett, United States Attorney for the Eastern District of Texas, and J. Howard Marshall, Special Assistant to the Attorney General of the United States, from enforcing any Rule or Regulation designated by the Secre-

tary of the Interior under the National Industrial Recovery Act insofar as the same applies to the production of petroleum or the refining and storage thereof, of the transportation of petroleum or the products in intrastate commerce, and enjoining said parties, their servants, agents and employees and anyone else purporting to act under the authority of the National Industrial Recovery Act or any Rule or Regulation promulgated thereunder from going upon or about the premises of the complainants or in anywise interfering with them or molesting them in the conduct of their business by reason of the provisions of the National Industrial Recovery Act or Regulations promulgated thereunder. Appellants urge below and again urge here that the District Court erred by the reasons specifically set forth in the Assignment of Errors. Appellants, pursuant to the direction from the Solicitor General of the United States and the Department of Justice, have taken appeal [fol. 219] from said decree and permanent injunction and the same has been duly allowed by said District Judge.

On the 26th day of March, A. D. 1934, your appellants petitioned the District Court in said cause for a supersedeas and stay of said decree and injunction pending disposition of this appeal and the District Court denied said supersedeas and stay of the injunction.

Unless this Honorable Court grants a supersedeas in this cause and stays all proceedings under or by virtue of said order, there will be grave and irreparable injury and damage done to said appellants and to the producers and refiners of petroleum and the products thereof in the State of Texas and elsewhere throughout the United States, and to the Secretary of the Department of the Interior in his administration of Section 9 (c) of the National Industrial Recovery Act. The effect of the decree and the injunction will be to bring to a complete halt the Government's program in and for the petroleum industry in the State of Texas and elsewhere throughout the United States, and a substantial tendency towards the breakdown of the recovery of the entire petroleum and allied industries throughout the United States. One of the cornerstones of the present national program is in virtual suspension and the conservation of a natural resource essential to the national defense is seriously imperiled.

The appellants further state that in their opinion the order of said District Court granting said permanent in-

junction should and will be reversed, or, at least, that it [fol. 220] appears that there is reasonable doubt as to whether the order of said District Court should be sustained.

Wherefore, appellants pray this Honorable Court to enter an order of supersedeas, without bond, staying the permanent injunction granted by the decree entered in this cause on February 21, 1934, and, commanding said District Court, its Judge, Clerks and Marshals to refrain from taking or suffering to be taken before them any further proceedings pursuant to, or by virtue of, said decree granting said injunction herein, until the hearing and decision by this Court of the said appeal and the return of the mandate thereon; and ordering that good and sufficient service of such order of this Court shall be deemed made by lodging in the office of the Clerk of the United States District Court for the Eastern District of Texas, Tyler Division thereof, a true copy of this motion and the order of the Court entered thereon; and for such further relief as to this Court may seem proper.

Charles Fahy, John F. Davis, Chas. I. Francis, Special Assistant to the Attorney General, Attorneys for the Appellants, 617 Citizens Nat. Bank Bldg., Tyler, Texas.

[fol. 221] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. —

A. D. RYAN et al., Appellants,

vs.

PANAMA REFINING COMPANY et al., Appellees

No. —

ARCHIE D. RYAN et al., Appellants,

vs.

AMAZON PETROLEUM CORPORATION et al., Appellees

AFFIDAVIT IN SUPPORT OF MOTIONS FOR SUPERSEDEAS AND STAY ORDERS

STATE OF TEXAS,
County of Smith:

Before me, the undersigned authority, a Notary Public in and for said County and State, on this day personally ap-

peared J. R. Cannon, known to me to be the identical person whose name is subscribed to this affidavit and who being by me duly sworn on oath deposes and says:

[fol. 222] My name is J. R. Cannon. I am Acting Special Agent in Charge of the Division of Investigations of the Department of the Interior at Tyler, Texas, and am particularly familiar with conditions in the East Texas oil field and generally with conditions in the oil industry throughout the United States. I am also familiar with the records and files of the Division of Investigations at Tyler, Texas, in which are reflected East Texas oil field conditions since the Tyler office was opened in August of 1933.

Overproduction in the East Texas field at this time amounts to approximately 75,000 barrels per day. This excess oil and its refined products jeopardize the interstate petroleum market throughout the Midcontinent and Eastern Coast area. This figure represents approximately a one hundred per cent increase in overproduction since the decision of the United States District Judge in the Panama and Amazon cases and in my opinion is directly attributable to the effect of these decisions in preventing effective Federal regulation, as the injunctions in these cases apply to approximately one hundred and forty-four producing and refining properties which constituted a substantial per cent of the total sources of illegally produced oil and refined petroleum products.

In my opinion the State authorities alone and unsupported by the Federal authorities cannot curb this illegal produc-[fol. 223] tion under conditions that now exist.

J. R. Cannon, Acting Special Agent in Charge.

Subscribed and sworn to before me this 31st day of March, A. D. 1934. Mrs. H. I. Griffies, Notary Public, Smith County, Texas. My commission expires June 1, 1935. (Seal Notary Public, County of Smith, Texas.)

[fol. 224] No. 7351

A. D. Ryan, S. D. Bennett and J. Howard Marshall

versus

Panama Refining Company et al.

Order Staying Decree Pending Appeal

Extract from the Minutes of April 4th, 1934

Upon application of appellants, it is ordered that pending the appeal herein the decree of the district court, insofar as it enjoins inspections and the furnishing of reports of oil produced and refined as required by the provisions of law and regulations complained of, be and the same hereby is stayed.

[fol. 225] No. 7351

A. D. Ryan, S. D. Bennett and J. Howard Marshall

versus

Panama Refining Company et al.

Argument and Submission

Extract from the Minutes of May 2nd, 1934

On this day this cause was called, and, after argument by Douglas Arant, Esq., Special Assistant to the Attorney General, and Chas. I. Francis, Esq., Special Assistant to the Attorney General, for appellants, and F. W. Fischer, Esq., for appellees, was submitted to the Court.

[fol. 226] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7351

A. D. RYAN, S. D. BENNETT and J. HOWARD MARSHALL, Appellants,

versus

PANAMA REFINING COMPANY et al., Appellees

Appeal from the District Court of the United States for the Eastern District of Texas

Before Bryan, Foster and Sibley, Circuit Judges

OPINION OF THE COURT—Filed May 22nd, 1934

SIBLEY, Circuit Judge:

This case was tried in the District Court and in this court along with that of Amazon Petroleum Corporation, et al., vs. Ryan, et al., the appeal in which has just been disposed of. The cases are similar except that this embraces among its complainants certain refiners of oil who ship some of their products in interstate commerce and who attack also Regulation V of the Secretary of the Interior which provides for [fol. 227] reports to be made by refiners. The present decree enjoined the enforcement of that Regulation also. What was said by us in the opinion in the case of Amazon Petroleum Corporation applies here, and for the reasons there set forth we reverse the decree in this case and remand the cause with direction to dismiss the bill.

[fol. 228] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7350

ARCHIE D. RYAN, S. D. BENNETT and PHIL E. BAER, Appellants,

versus

AMAZON PETROLEUM CORPORATION et al., Appellees

Appeal from the District Court of the United States for the Eastern District of Texas

Before Bryan, Foster and Sibley, Circuit Judges

OPINION OF THE COURT—Filed May 22nd, 1934

SIBLEY, Circuit Judge:

The Amazon Petroleum Corporation, with other producers of petroleum in the East Texas field, brought a bill to enjoin the Railroad Commission of Texas and other officers of the State from enforcing orders of the Commission which greatly restricted the production of oil; and at the same time to enjoin Ryan, an agent of the Department of the Interior of the United States, and the United States District [fol. 229] Attorney and the Marshal from enforcing certain portions of the National Industrial Recovery Act and of the Regulations and Code for the Petroleum Industry promulgated thereunder. A court of three judges having severed the two causes of action and taken jurisdiction of that to enjoin the orders of the Railroad Commission, upheld those orders. Amazon Petroleum Corporation vs. Railroad Commission, 5 Fed. Sup. 633. The cause of action against the federal officers was tried by the District Judge and a final decree rendered by which the defendants were perpetually enjoined from enforcing Section 4 of Article III of the Petroleum Code and Regulation IV, and from going on the property of the complainants by virtue of them, and from instituting civil actions or criminal prosecutions for violation of them. 5 Fed. Sup. 639. This decree is now under review by appeal.

Article III of the Petroleum Code is entitled, Production. Section 1 relates to limiting imports of petroleum and its products. Section 2 relates to withdrawals from storage. Section 3 provides for a Federal Agency designated by the President to make estimates of required domestic production and under approval of the President to allocate it equitably among the states. Sec. 4 reads: "The subdivision into pool and/or lease and/or well quotas of the production allocated to each State is to be made within the State. Should quotas allocated in conformity with the provisions of this Section and/or Section 3 of Article III of this Code not be made within the State or if the production of petroleum within any State exceeds the quota allocated to said State, the President may regulate the shipment of petroleum or petroleum products in or affecting interstate commerce out of said State to the extent necessary to effectuate the purposes of the National Industrial Recovery Act and/or he may compile such quotas and recommend them to the State Regulatory Body in such State, in which [fol. 230] event it is hereby agreed that such quotas shall become operating schedules for that State. If any subdivision into quotas of production allocated to any State shall be made within a State any production by any person, as person is defined in Article I, Section 2 of this Code, in excess of any such quota assigned to him shall be deemed an unfair trade practice and in violation of this Code." The attacked Regulation IV was made by the Secretary of the Interior by virtue of the delegation to him of the Presidential power by an Executive Order of July 14, 1933. In substance the Regulation requires every producer of petroleum to file with the Department of the Interior each month a sworn statement of the allowable production fixed by the State Agency for each of his properties and wells, the daily production from each and the place of storage, and a declaration that none of the petroleum produced or shipped was in excess of the amount permitted by the state. Regulation VII requires that adequate books and records of all transactions in production and transportation of petroleum be kept and maintained available to inspection by the Department of the Interior. No provision is called to our attention which specifically authorizes the inspection of oil properties and storage tanks. The evidence is without substantial conflict, and shows that the complainants are

only producers of crude petroleum, neither selling it for delivery in other states or countries nor transporting it thither, but disposing of it on their properties in Texas. The Texas Railroad Commission has adopted the allocation for the state made under Petroleum Code, Article III, Section 3, and its orders have reduced the allowable production of complainants' wells to a small percentage of their capacity. The defendants are demanding the reports required by Regulation IV, are inspecting the books and the properties of the complainants and gauging their storage tanks, and threaten and intend to prosecute them for violation of the [fol. 231] Regulations and Code. Some of the complainants have in fact been producing and disposing of petroleum in excess of that allowable. The East Texas oil field is the largest in the country and capable alone of producing the petroleum marketable in the United States. It has most of the flowing wells from which oil is most cheaply produced. Production in excess of market demand greatly affects the market price, which has often fallen below the cost of production even in Texas, and sometimes as low as ten cents per barrel at the well. Eighty-five per cent of the oil produced in Texas and its products is transported into other states, and greatly affects the oil business in all states. Eighteen other states produce petroleum also, of which California and Oklahoma are capable of producing amounts comparable with those producible in Texas, but in other states the wells are less bountiful and more costly in operation, but yield a very large aggregate production and represent a huge investment. Petroleum is an exhaustible national resource, very necessary in the arts of peace and war, of importance to all parts of the country and incapable of satisfactory substitution. Its production is a major industry and its distribution is necessarily carried on largely in interstate and foreign commerce since over half of the states produce none. It is peculiar in its transportation and handling, because this is most largely done by means of pipe lines in which the oil of many producers is often indistinguishably mingled on the way to a refinery, to storage tanks, or in transportation to other states and countries. In the oil fields these pipe lines are a complicated and connected system, often underground, with unobservable ramifications. Sometimes bypasses are employed to run oil secretly around the place

for its measurement by the mere opening of a valve. By these means and others oil in excess of what is allowable is produced and shipped in interstate commerce in large [fol. 232] quantities, not only defeating the attempted restrictions but demoralizing the general markets and often cheating those who have royalty interests in what is produced. If the transportation of excess oil in interstate commerce is to be successfully controlled, the system of reports and records required and the inspections practiced are both reasonable and necessary.

The main contentions made by appellants or by appellees are: 1. That the Secretary of the Interior is an indispensable party to the attack on his Regulations. 2. That the production of oil cannot be regulated by Congress and the provisions of the Act and of the Regulations and of the Code dealing with it are unconstitutional. 3. That the Regulations and the Code exceed the authority given by the Act. 4. That if Congress could itself have made the attacked provisions it could not delegate to the President and he could not delegate to others the power to make them. 5. That the reports and inspections are searches and compulsions to self-incrimination forbidden by the Constitution.

1. The Secretary of the Interior is not personally doing or threatening the acts of trespass and of prosecution which are sought to be enjoined. Although the actors may be authorized and incited by him so that he would be a proper co-defendant if he were within the court's reach, the court has power to stop the trespassing by those within its jurisdiction irrespective of their claim that they are acting for others. Osborne vs. Bank of United States, 9 Wheat. 738; State of Colorado vs. Toll, Supt., 268 U. S. 228. This is not a bill to cancel the Secretary's Regulations, but only to test their efficacy to protect defendants in their alleged trespasses against complainants' rights. There is no more need to make the Secretary a party for this purpose than to make the President a party because he promulgated the Code or the Congress because it enacted the statute.

[fol. 233] 2. The National Industrial Recovery Act, Section 303, provides: "If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be

affected thereby." We are therefore called on to deal only with those provisions of the Act directly involved in this case, and with their application to the circumstances here appearing. A more general discussion of the Act is both unnecessary and inappropriate. Section 9 is devoted to oil regulation. Paragraph (c) reads: "The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any state law or valid regulation or order prescribed thereunder by any board, committee, officer or other duly authorized agency of a state. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by fine of not to exceed $1,000.00 or imprisonment for not to exceed six months, or both." The prohibition thus authorized was made by the President on July 11, 1933. On its face it is a regulation of transportation in interstate and foreign commerce, and within that familiar power of Congress. But because it is expressly based on and is designed to aid a restriction on production or withdrawal from storage made by valid state law or regulation it is said to be in reality a regulation of production within the state, which is not interstate or foreign commerce. Oil production is either mining or manufacture. Neither the one nor the other is ordinarily within the power of Congress to regulate within a state. Kidd vs. Pearson, 128 U. S. 1; Hammer vs. Dagenhart, 247 U. S. 251; United Mineworkers vs. Coronado Coal Co., 259 U. S. 345; Oliver Iron Mining Co. vs. Lord, 262 U. S. 172; Cham- [fol. 234] plain Refining Co. vs. Corporation Commission, 286 U. S. 210; Utah Power & Light Co. vs. Pfost, 286 U. S. 165. It may be that under peculiar circumstances, such for example as are here shown to exist in the relation of oil production in Texas to commerce in oil with and among the other states, such a burden on or interference with interstate commerce may exist as to justify Congressional action, as in the case of intrastate rates which injuriously affect interstate commerce, Houston, E. & W. T. R. R. Co. vs. United States, 234 U. S. 342; Wisconsin R. R. Commission vs. C., B. & *R.* R. R. Co., 257 U. S. 563; Florida vs. United States, 282 U. S. 194; or local stockyard practices, Stafford vs. Wallace, 258 U. S. 495, or selling of grain on the ex-

changes. Chicago Board of Trade vs. Olsen, 262 U. S. 1. Such a question may arise under the provisions of the Petroleum Code, Article III, Section 4, relating to the fixing of production quotas, but in the provision of the Act now before us there is no such question. The regulation of production is assumed to have been validly made by the state, and the federal regulation is actually only of interstate and foreign commerce, adjusted to aid and not to thwart the state action. Such cooperation between state and central government is not constitutionally wrong, but right and desirable. The central government was not created to be an opponent and a rival of the state governments, but to be a supplement and a protection to them. Its enumerated powers, although supreme and sometimes exercised to the dissatisfaction of some state, are not misused when by a happy concord of duty these governments can cooperate. The grant to the central government of the power to regulate interstate and foreign commerce is without qualification and in general exclusive of the states, and that government may rightly take up the regulation of a matter at the point where the state government because of this grant must itself cease to regulate. Thus when some of the states [fol. 235] in the exercise of their general police power sought to control the transportation and sale of intoxicating liquors within their borders, Congress with a plain purpose to make the state regulation more effective first made such liquors subject to state laws on arrival, and later forbade them to be transported in interstate commerce into such a state. In Re Rahrer, 140 U. S. 545; Clark Distillery Co. vs. Western Maryland R. R. Co., 242 U. S. 311. So the states in the exercise of their police power regulate the stealing of automobiles, but Congress supplementarily forbids and punishes the interstate transportation of stolen cars. Brooks vs. United States, 267 U. S. 432. The Lottery Act supplements in the federal domain a police power indubitably residing in the states. Champion vs. Ames, 188 U. S. 321. Other instances might be cited. The provision of the National Industrial Recovery Act under discussion is not unconstitutional because it operates and was intended to operate so as to make more effectual valid state action with reference to oil production.

Nor is it unconstitutional because its effect is temporarily to restrict the volume of interstate and foreign commerce

in oil. No doubt in general there should be free trade among the states, but that is not to say that laissez faire must have full scope. The power to regulate interstate commerce is given to Congress in identical terms with the power to regulate foreign commerce. The regulation of foreign commerce for the good of the whole country by severe restrictions on immigration, and by protective tariffs on goods, and by embargoes, is a part of our history and may be independent of any inherent objectionableness in the persons or the articles affected. A similar power, with some special restrictions, exists as to interstate commerce and may be exercised not only to exclude harmful articles but to better the health and stability of such commerce as a whole. Regulation by prohibition was upheld in the cases [fol. 236] above cited. What a centralized constitutional government may do in the way of regulation of trade or commerce our dual system can accomplish by the cooperation of its state and central governments.

The contention is also made that the effect of Sect. 9(c) of the statute is to take property without due process of law. Of course regulations of commerce, whether by state or central government, must not offend other provisions of their respective constitutions. But by hypothesis of the statute the regulation by the state must be a valid one. Validity has been adjudicated in this case. The prohibitions on this point of the state constitution and of the Fourteenth Amendment with reference to the state are so similar to the prohibition of the Fifth Amendment as to the central government that if the state regulation be valid the assisting federal statute cannot well offend at this point.

3. The Act, Sect. 10(a), authorizes the President to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and provides punishment for their breach. Regulations IV and VII providing for monthly statements and for books and records subject to inspection are clearly shown to be necessary in order to render effectual the prohibition of the statute against shipping excess petroleum in interstate and foreign commerce. Excess oil cannot be distinguished after it is mingled with other oil either in the storage tank, the pipe line or the tank car. If it is produced it can be traced into interstate commerce only by producers' reports and such

inspections as are provided for. The fact that the producers themselves do not engage in intertsate commerce does not render it less necessary that they furnish information. Those who buy from them probably could not tell whether what they bought and were about to ship was or [fol. 237] was not excess oil. The inspection of books is only a check on the truthfulness of the reports. The attacked regulations are supported as reasonably necessary to the purposes of the Act.

The Code provision, Art. III, § 4, adopted under Sect. 3 of the Act, goes further than the provisions of Sect. 9(c) heretofore considered because it deals directly with production. These complainants have not consented to the Code and are bound by it only if it has the force of law. The Code provides for an ascertainment by a Federal Agency of the required domestic production of crude oil and its products, and for its equitable allocation among the several states by Presidential approval; and if the allocation is not regarded by the state agencies by making a subdivision of it among the pools, leases and wells within the state so that an excess production results, the President may either regulate shipments out of the state so as to equalize such shipments or may himself make and recommend to the state agencies such quotas, which shall then become operating schedules for that state. Production by any person in excess of the quota assigned to him is declared an unfair trade practice and in violation of the Code. Since production of excess oil and not its shipment in interstate or foreign commerce thus constitutes violation of the Code, it is said that the commerce power of Congress is exceeded. In this case the State of Texas has fixed its own quotas, so that federal power to fix them is not involved. We do not inquire whether the production of crude oil intended for shipment interstate or foreign commerce constitutes such a threat to do that act or such a temptation to it as to be capable of restraint in order to make effectual the prohibition of shipments in such commerce, in the manner in which the possession of intoxicating liquors was held to be regulable by Congress although the sale and transportation only of them was within Con- [fol. 238] gressional power. For by reference to Sect. 5 of the Act it appears that the sanctions for violating the Code are but three. Paragraph (b) declares a violation to be

an unfair method of competition within the meaning of the Federal Trade Commission Act. If that sanction be an unlawful one, and should be sought to be applied against complainants before the Federal Trade Commission, they have their remedy in that proceeding. Paragraph (c) provides for injunction proceedings by the District Attorney to prevent violation, and a complete remedy against wrong is available there. Paragraph (f) provides a sanction by criminal prosecution, but only when the violation is "in any transaction in or affecting interstate or foreign commerce." An indictment or information could not stop at alleging the production of excess oil, but would have to allege with appropriate fullness that it was in a transaction in interstate commerce or affecting it. This sanction is thus tied to and seemingly not intended to exceed the commerce power of Congress. Each such criminal case would depend on its own facts. The provision of the Code thus enforced does not appear to be unconstitutional. Whether any complaint at any time has violated it is more appropriately to be tried in a prosecution of him than in this composite suit in equity. We may say of all three sanctions that an adequate remedy against abuse is afforded in the proceedings indicated by the statute for their respective enforcement, so that a remedy in equity by injunction may not be had.

4. The delegation to the President of power to put the prohibition of Sect. 9(c) into effect is not seriously attacked. Such a thing has been often done under varying forms of language, as appears by the review of statutes in Field vs. Clark, 143 U. S. 649. See also Hampton vs. United States, 276 U. S. 394. But the regulations promulgated by the Secretary of the Interior and the Code approved by the President are strongly attacked as an im- [fol. 239] proper delegation of legislative power. We have shown the regulations in question to be reasonable and within the Act if made by the President. The Act in Sect. 2(b) expressly authorized the President to appoint some one else to exercise any function or power given him, and he appointed the Secretary to exercise this function. It is the case of a legislative agent authorized to appoint a subagent. Congress, well knowing that the President could not personally do all that was put on him, authorized him to select some one to attend to the business instead of

itself appointing such a one. We know of nothing to forbid it. The regulations made by the Secretary stand as though Congress had directly authorized him to make them.

The Code is a novelty in legislation. Its making was not a delegation by Congress of a power of legislation to the various trade or industrial groups mentioned in Sect. 3*[1]. The groups could really do nothing but advise the President just as Congress itself often is advised by hearing those to be affected. While a very strong influence is accorded to each group, it is the President's act in approving a recommended Code or imposing an involuntary one that gives it force. Congress puts sanctions behind either which are intended to make it enforceable law. Whether the general purposes of the Act stated in Sect. 1, together with the requisites of a Code set out in Sect. 3 or elsewhere are [fol. 240] statements of an intelligible legislative plan sufficient to be filled out and executed by a commission after hearing those to be affected, as for instance when a legislature orders just and reasonable rates to be established on railroads and authorizes a commission to enquire into and fix them, is a question we need not broadly answer.*[2] The

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*[1] Congress by the Act of March 2, 1893, enacted that the American Railway Association, a mere trade body, should fix the height of draw-bars for railway cars which was to be established as standard by the Interstate Commerce Commission, but there was thereby no unconstitutional delegation of legislatvie power. St. Louis & Iron Mountain R. R. Co. vs. Taylor, 210 U. S. 281. By R. S. § 2324 Congress in providing for mining on the public lands enacted that the miners in each district might make regulations not in conflict with law. These regulations come close to being a miners' code of fair competition in staking out claims, but there was no improper delegation of legislative powers to the miners. Erhart vs. Boaro, 113 U. S. 527; Butte City Water Co. v. Baker, 196 U. S. 119.

*[2] While Congress cannot abdicate legislative power, it may make large delegations of it, always retaining the right of control and of reassumption. While the Constitution was being written the then Congress on July 13, 1787, made the Ordinance for the Government of the Northwest Territory, in which very broad legislative powers were delegated.

particular policy and plan disclosed in Sect. 9 to regulate excess oil by debarring it from interstate commerce is entirely clear. The regulations and Code provisions which are here in issue do not go beyond that purpose and plan.

5. The regulations touching reports and inspection of records are not in violation of the prohibition of the Fourth [fol. 241] Amendment forbidding unreasonable searches or of the Fifth Amendment guaranteeing that no person shall be compelled in any criminal case to be a witness against

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Similar delegation occurred when the Louisiana Territory was purchased. Sere vs. Titot, 6 Cranch. at page 337. Legislative power appropriate for a municipality was delegated with reference to the District of Columbia. Stoutenberg vs. Hennick, 129 U. S. 141. Governments with legislative powers have been established by Congress for other territories and insular possessions. See United States vs. Heinszen, 206 U. S. at page 385. Broad powers given the Secretary of Agriculture to make regulations touching forest reserves, whose breach was criminally punishable, were upheld in United States vs. Grimaud, 220 U. S. 506. In all these cases matters within the states were not directly affected. Such matters ought no doubt to be kept more directly in Congressional control; but even so, practical necessity has required of Congress more and more to act through agents in fixing legislative details. The Interstate Commerce Commission is an outstanding example. One of its broadest discretionary powers in reference to the long and short haul clause was upheld as validly delegated in United States vs. Acheson, T. & S. F. R. R. Co., 234 U. S. 476. The Secretary of War is validly empowered to require alteration or removal of bridges which unreasonably obstruct navigable waters. Union Bridge Co. vs. United States, 204 U. S. 364; Monongahela Bridge Co. vs. United States, 216 U. S. 177. The Federal Reserve Board was validly authorized to empower individual National Banks to act as trust companies. First National Bank Bay City vs. Fellows, 244 U. S. 416. The delegation to the President of power to alter tariffs within limits and for purposes disclosed was held not unconstitutional in Hampton vs. United States, 276 U. S. 394. We have discovered no delegation which Congress has plainly made that has been refused recognition by the Supreme Court.

himself. A producer of oil does not operate under any right or license derived from the federal government and is not subject to such rigorous treatment as if he did. But he is a citizen within the protection of that government and owes it a citizen's duty to assist in the enforcement of its laws. The object of the reports and the inspection of books is to ascertain the existence and the disposition of excess oil in order that its interstate and foreign transportation may be stopped. The government has a right to know about this, just as it has a right to know what the citizen's income is that it may be taxed. Presumably no crime has been committed by producer or taxpayer. No criminal case is pending, and the immediate purpose is information and not prosecution. The fact that the report is required greatly tends to keep producer or taxpayer from committing a crime that would be disclosed thereby. But if he has committed a crime and is entitled to withhold evidence of it, he should at the proper time and on the specific ground that disclosure would tend to criminate him, assert the right to withhold the particular evidence. Because such a thing conceivably might occur is no reason to upset laws and regulations which are generally useful and necessary in the public business.

The inspection of properties and tanks and pipe lines does not seem to be expressly authorized by any regulation. It may be a civil trespass when not consented to, even though it is not a search in the constitutional sense when the premises are open to free entry. See Hester vs. United States, 265 U. S. 57; United States vs. Western & Atlantic Railroad, 297 Fed. 482. But if a trespass, there is no show-[fol, 242] ing of irreparable damage or insolvency of the trespassers, and no occasion for an injunction on that account.

We are of opinion that the injunction ought not to have been granted, and the decree is reversed and the cause remanded with direction to dismiss the bill.

[fol. 243] No. 7351

A. D. Ryan, S. D. Bennett and J. Howard Marshall

versus

Panama Refining Company et al.

Judgment

Extract from the Minutes of May 22nd, 1934

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court with direction to dismiss the bill.

[fol. 244] In the United States Circuit Court of Appeals, Fifth Circuit

No. 7351

A. D. Ryan et al., Appellants,

vs.

Panama Refining Company et al., Appellees

Application of Appellees for Stay of Mandate

Motion and Order Staying Mandate—Filed June 7, 1934

Come now the appellees in the above entitled and numbered cause, and would show to the court that they will immediately, and as soon as the clerk of this court can prepare a transcript of the proceedings in this cause, apply to the Supreme Court of the United States for a writ of certiorari to review the judgment rendered herein by this honorable court, wherein it reversed the judgment of the district court and vacated and set aside the injunction granted by the district court in favor of appellees and against appel-

lants and ordered a dismissal of appellees' bills of complaint.

[fol. 245] Appellees would further show that while this cause was pending before this honorable court and before its determination thereof, this court entered an order staying the injunction granted appellees by the district court, in so far as it enjoined inspection and the furnishing of reports of oil produced and refined, as required by the provisions of the law and regulations complained of. Therefore, the only portion of the decree of the district court that has not already been stayed by this court is that part wherein appellants are enjoined from proceeding with the criminal prosecutions already instituted against appellees, and from instituting additional criminal prosecutions against appellees because of their failure to comply with the regulations that are attacked in this suit.

Appellees would further show to the court that there is now pending before the Supreme Court of the United States in the cause of United States of America, Appellant, vs. J. W. Smith et al., Appellees, and numbered No. 869 on the docket of said court, the question of whether one may be subjected to criminal prosecution for failure to comply with the identical regulations that are attacked in this suit; and the determination by the Supreme Court of the United States of that question in said cause will be determinative of the question as to whether the appellees in this case may be subjected to criminal prosecution for failure to comply with the regulations attacked herein.

[fol. 246] Appellees would further show to the court that they believe that if the mandate of this court, vacating the injunction of the district court, is not stayed, the appellants will immediately proceed with said criminal prosecutions, as well as institute other criminal prosecutions because of the failure of appellees to comply with the attacked regulations before and after the granting of the injunction against them in the trial court, notwithstanding the question of the appellees' criminal liability for failure to comply with said regulations is now pending before the Supreme Court of the United States and set for submission in October, 1934.

Wherefore, because of the premises, appellees pray that this honorable court stay its mandate for such time as will enable the appellees to apply to the Supreme Court of the

United States for a writ of certiorari to review the judgment of this court, and if appellees file such application with the clerk of said court within such time, then that said mandate be stayed until this cause is determined by said court.

Respectfully submitted, F. W. Fischer, Tyler, Texas, Attorney for Appellees.

[fol. 247] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 7351

A. D. RYAN, S. D. BENNETT and J. HOWARD MARSHALL, Appellants,

versus

PANAMA REFINING COMPANY et al., Appellees

On consideration of the application of the Appellees in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable Appellees to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, it is ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition, and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 7th day of June, 1934.

(Signed) Rufus E. Foster, United States Circuit Judge.

[fol. 248] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 217 to 247 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 7351, wherein A. D. Ryan, S. D. Bennett and J. Howard Marshall are appellants, and Panama Refining Company, et al., are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 216 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 7th day of June, A. D. 1934.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 249] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 8, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 38,763. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 135. Panama Refining Company et al., Petitioners, vs. A. D. Ryan, S. D. Bennett and J. Howard Marshall. Petition for a writ of certiorari and exhibit thereto. Filed June 29, 1934. File No. 135, O. T., 1934.

(5590-C)